



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Dave Potter, Council Members Jeff Baron,
Jan Reimers, Bobby Richards, and Carrie Theis
Contact: 831.620.2000 www.ci.carmel.ca.us

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

REGULAR MEETING Tuesday, October 6, 2020

Governor Newsom's Executive Order N-29-20 has allowed local legislative bodies to hold public meetings via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Also, see the Order by the Monterey County Public Health Officer issued March 17, 2020. The health and well-being of our residents is the top priority for the City of Carmel-by-the-Sea. To that end, this meeting will be held via teleconference and web-streamed on the City's website ONLY.

To attend via Teleconference; Dial in number 1 337-339-9248 PIN: 265 130 248#

The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be added to the agenda and made part of the record.

OPEN SESSION 4:30 PM

CALL TO ORDER AND ROLL CALL

PUBLIC APPEARANCES

Members of the Public are invited to speak on any item that does not appear on the Agenda and that is within the subject matter jurisdiction of the City Council. The exception is a Closed Session agenda, where speakers may address the Council on those items before the Closed Session begins. Speakers are usually given three (3) minutes to speak on any item; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak. If an individual wishes to submit written information, he or she may give it to the City Clerk. Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

ANNOUNCEMENTS

- A.** City Administrator Announcements
- B.** City Attorney Announcements
- C.** Councilmember Announcements

CONSENT AGENDA

Items on the consent agenda are routine in nature and do not require discussion or independent action. Members of the Council, Board or Commission or the public may ask that any items be considered individually for purposes of Council, Board or Commission discussion and/ or for public comment. Unless that is done, one motion may be used to adopt all recommended actions.

1. August 31, 2020 Special Meeting Minutes, September 1, 2020 Meeting Minutes, September 3, 2020 Adjourned Meeting Minutes and September 22, 2020 Special Meeting Minutes
2. Monthly Reports for August: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report
3. August 2020 Check Register Summary
4. Resolution 2020-061 extending for 90 days the terms ending September 30, 2020 for the members of the Community Activities & Cultural Commission, Forest & Beach Commission, Harrison Memorial Library Board of Trustees and Historic Resources Board
5. Resolution 2020-062 authorizing the City Administrator to retroactively extend the contract for animal services with the Monterey County Health Department's Animal Services Division ending June 30, 2021
6. Resolution 2020-063, amending Policy C89-02 City Council Rules and Procedures
7. Resolution 2020-064, amending Policy C95-01 Claims Against the City
8. Resolution 2020-065 authorizing the City Administrator to execute an agreement with the Monterey County Convention and Visitors Bureau for Destination Marketing for the term of July 1, 2020 to June 30, 2021 in an amount not to exceed \$120,040
9. Resolution 2020-066 accepting a donation of \$5,000 from an anonymous donor for Mutt Mitt sponsorships and approving a budget amendment in the amount of \$18,850 to the Fiscal Year 2020-2021 Adopted Budget to account for all Mutt Mitt sponsorships received as of September 21, 2020
10. Resolution 2020-067 accepting donations from Carmel Cares, a volunteer organization
11. Resolution 2020-068, declaring the City Council's intention to renew the Carmel Hospitality Improvement District and fixing the time and place of a public meeting and public hearing thereon and giving notice thereof
12. Resolution 2020-069, authorizing application for, and receipt of, State of California Regional Early Action Program (REAP) Planning Grant Program funds
13. Resolution 2020-070 amending Resolution 2020-057 regarding rules for the use of the beach in the City of Carmel by-the-Sea
14. Resolution 2020-071 authorizing the City Administrator to execute an agreement regarding Verizon Wireless Small Cell Facilities

ORDERS OF BUSINESS

Orders of Business are agenda items that require City Council, Board or Commission discussion, debate, direction

to staff, and/or action.

15. Presentation on the Years Two and Three Status Report for the North Dunes Habitat Restoration Project
16. Resolution 2020-072 approving applications for Per Capita Grant Funds
17. FY 2020-2021 Budget Status Update

PUBLIC HEARINGS

18. Consideration of an Appeal (Stepanek) of a decision made by the Forest and Beach Commission of August 20, 2020 for penalties to be paid for damage to the Urban Forest and approval of the removal of cypress tree #2

FUTURE AGENDA ITEMS

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, NE corner of Ocean Avenue and Lincoln Street, and the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us/carmel/> on in accordance with the applicable legal requirements.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

SPECIAL NOTICES TO PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).

Mutt Mitt Community Sponsorship Program Report (dated: 9/23/20)

Background:

In mid March it became clear that the revenue usually generated in Carmel-by-the-Sea would be diminished due to the Corona Virus Pandemic.

When the budget for the fiscal year July 1, 2020 to June 30, 2021 was presented, there was a significant reduction in the budget to maintain the Mutt Mitt program. The Mutt Mitt dispensers are placed throughout the city and several were going to be removed.

Concern for the impact of losing that convenience for pet owners and the effect on the environment led to the determination to offer a 'sponsorship' to citizens. The arrangement was that a citizen or business could sponsor a bin for a year for \$750. An individual could partially sponsor a bin for \$200. In each case the donor would specify how they would like to have their donation noted on the bin.

The sponsors, also, had the opportunity to select the specific bin they wished to sponsor. Remarkably, very few sponsors chose the same bin!

Statistics to date:

1. Originally, there were 34 dispensers available
2. Of those, 9 dispensers had been removed (4 were replaced with a donation of \$750)
3. Total number of bins that are being sponsored: 20
4. Bins that are in place and available to be sponsored: 9
5. Bins that could be replaced with a \$750 donation: 5
6. Individual, family & anonymous sponsorships: 23
7. Business sponsorships: 4
8. Organizational sponsorships: 5

An up to date accounting will be provided at the October 6th City Council meeting. The amount collected and that can only be used for the purpose of supplying the Mutt Mitt program is, as of September 11, 2020:

\$15,800.00

Respectfully submitted,
Jan Reimers
City Council Member



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

October 6, 2020
CONSENT AGENDA

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Britt Avrit, City Clerk
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	August 31, 2020 Special Meeting Minutes, September 1, 2020 Meeting Minutes, September 3, 2020 Adjourned Meeting Minutes and September 22, 2020 Special Meeting Minutes

RECOMMENDATION:

Approve August 31, 2020 Special Meeting Minutes, September 1, 2020 Meeting Minutes, September 3, 2020 Adjourned Meeting Minutes and September 22, 2020 Special Meeting Minutes as presented.

BACKGROUND/SUMMARY:

The City Council routinely approves the Minutes of its meetings.

FISCAL IMPACT:

None for this action.

PRIOR CITY COUNCIL ACTION:

None for this action.

ATTACHMENTS:

8-31-2020 Special Meeting Minutes
9-1-2020 Meeting Minutes
9-3-2020 Adjourned Meeting Minutes
9-22-2020 Special Meeting Minutes

CITY COUNCIL SPECIAL MEETING
Monday, August 31, 2020
4:30 PM

This meeting was held via teleconference due to the Shelter in Place Order issued by Monterey County and Governor Newsom's Executive Order N-29-20

CALL TO ORDER AND ROLL CALL

Mayor Potter called the meeting to order at 4:30

Present: Council Members Reimers, Baron, Theis, Mayor Pro Tem Richards, Mayor Potter

PUBLIC APPEARANCES

None

CLOSED SESSION

Item A: Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (one case)

Item B: Conference with Legal Counsel – Existing Litigation. Eva Miller v. City of Carmel, Case No. 19CV002163; pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9: (one case)

ADJOURNMENT

APPROVED:

ATTEST:

Dave Potter, Mayor

Britt Avrit, MMC
City Clerk

REGULAR MEETING
Tuesday, September 1, 2020
4:30 PM

This meeting was held via teleconference due to the Shelter in Place Order issued by Monterey County and Governor Newsom's Executive Order N-29-20

CALL TO ORDER AND ROLL CALL

Mayor/Chair Potter called the Carmel-by-the-Sea City Council Meeting to order at 4:33

Present: Council Members Reimers, Baron, Theis, Mayor Pro Tem Richards, Mayor Potter

EXTRAORDINARY BUSINESS

Item A: Jacob's Heart Proclamation; declaration of September as Childhood Cancer Awareness month

PUBLIC APPEARANCES

The following member of the public spoke:
Fred Bologna

ANNOUNCEMENTS

Item A: City Administrator Announcements
The City Administrator thanked the Fire Department, Police Department and Executive Team for their work and flexibility during the recent wild fire emergency and discussed the change to the disabled parking spot near the Post Office.

Discussion took place regarding Item No. 10 regarding an added recommended option being provided to the City Council without sufficient time for the public to consider that option. It was determined the item could be addressed at an Adjourned Regular Meeting of the City Council and the Carmel-by-the-Sea Public Improvement Authority; action will be taken when that item is discussed later in the agenda.

Item B: City Attorney Announcements
The City Attorney stated the City Council met in Closed Session on August 31, 2020 and discussed the matters listed on the agenda with no reportable action.

Item C: Councilmember Announcements
Council Member Reimers expressed her condolences to those suffering from the impacts of the wild fires and childhood cancer; discussed the success of the Mutt Mitt program.

Council Member Baron discussed upcoming Climate Change Committee meeting; thanked the residents and the businesses for their patience as staff manages the impacts of the pandemic on the community; discussed holding meetings virtually.

Item C: Councilmember Announcements continued...

Mayor Potter discussed the impact of the recent wild fires; thanked the Fire Department for the way they handled the evacuations and thanked the County for their handling of the fires.

CONSENT AGENDA

Council Member Reimers commented on Item 1, Item 2, Item 4 and Item 6.

PUBLIC APPEARANCES

The following member of the public spoke on the Consent Calendar:

Karen Ferlito

On a motion by Mayor Pro Tem Richards and seconded by Council Member Reimers, the City Council approved the Consent Calendar, by the following roll call vote:

AYES: BARON, REIMERS, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Item 1: Approve August 3, 2020 Special Meeting Minutes and August 4, 2020 Meeting Minutes as presented

Item 2: Monthly Reports for July: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report

Item 3: June and July 2020 Check Register Summaries

Item 4: Resolution 2020-053 accepting a donation of \$5,000.00 from the Friends of Mission Trail Nature Preserve and approving a budget amendment of five thousand dollars to the Fiscal Year 2020-2021 adopted budget.

Item 5: Resolution 2020-054 authorizing a refund of a Preliminary Site Assessment fee of \$1,135.00 to Erik Dyar

Item 6: Resolution 2020-055 amending the City's Financial Policies to include a revised Debt Management Policy

Item 7: Resolution 2020-056 rescinding Resolution 2016-057 and re-establishing the list of designated classifications and the disclosure categories of the City's Conflict of Interest Code

ORDERS OF BUSINESS

Item 8: Resolution 2020-057 ratifying Order 20-2 regarding rules for the use of the beach and Urgency Ordinance 2020-006 adopting rules for the use of the beach

The City Administrator and City Attorney provided the staff report for this item.

Discussion among the City Council and staff included discussion of not moving forward with the Urgency Ordinance at this time, including an end date for the Order, revising or removing some of the restrictions listed in the Order and discussion of the Police Department's capacity to enforce the Order. Additionally discussion took place regarding following the Governor's Order with regard to large groups and ensuring the restrictions are similar to other cities on the Peninsula.

On a motion by Council Member Reimers and seconded by Council Member Baron, the City Council adopted Resolution 2020-057 ratifying Order 20-2 regarding rules for the use of the beach with modification to Section 2.1 striking "coolers or other containers for the storage of food or drinks", and "chairs", Section 2.2 is stricken in its entirety, Section 2.3 is amended to read "No groups of more than 10 people shall be permitted on the beach," modified the first resolve of the Resolution to include "Order 20-2 will expire on October 7, 2020 unless extended by action of the Council" and modified the second resolve by adding "except as modified herein," by the following roll call vote:

AYES: BARON, REIMERS, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

It was the consensus of the City Council to address Item 11 at this time.

Item 11: Resolution 2020-060, acknowledging the letter co-signed by Mayor Potter and City Administrator Chip Rerig to Governor Newsom and Lisa Mangat, Director of State Parks requesting closure of all State beaches in Monterey County over the Labor Day Weekend in coordination with the closure of the City's beach

The City Administrator provided the staff report for this item.

The City Council requested clarification regarding the closure being the same as what was in place for the July 4th holiday.

On a motion by Council Member Theis and seconded by Council Member Reimers, the City Council adopted Resolution 2020-060, acknowledging the letter co-signed by Mayor Potter and City Administrator Chip Rerig to Governor Newsom and Lisa Mangat, Director of State Parks requesting closure of all State beaches in Monterey County over the Labor Day Weekend in coordination with the closure of the City's beach, by the following roll call vote:

AYES: BARON, REIMERS, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Item 9: Receive a preliminary Fiscal Year 2019-2020 year-end status report; receive a budget status report on Fiscal Year 2020-2021 and adopt Resolution 2020-058 approving a budget amendment of \$76,330 to the Fiscal Year 2020-2021 Adopted Budget

The Finance Manager provided the staff report for this item.

The City Council requested clarification regarding if there is an option to change the payment frequency with regard to the CalPERS payment from monthly to yearly if the City's financial status changes.

Discussion among the City Council and staff included discussion of the City's conservative approach resulted in the need to use less "fund balance" than originally anticipated, the Council thanked staff for the sacrifices already made and being made regarding the City's financial status. Additionally the City Council and staff discussed the timing for potentially revising the current budget based on actual revenues received.

On a motion by Council Member Baron and seconded by Mayor Pro Tem Richards, the City Council received a preliminary Fiscal Year 2019-2020 year-end status report; received a budget status report on Fiscal Year 2020-2021 and adopted Resolution 2020-058 approving a budget amendment of \$76,330 to the Fiscal Year 2020-2021 Adopted Budget, by the following roll call vote:

AYES: BARON, REIMERS, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Item 10: Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions and provide direction on savings option

On a motion by Council Member Reimers and seconded by Council Member Theis, the City Council adjourned this item to September 3, 2020 at 5:00 p.m., by the following roll call vote:

AYES: BARON, REIMERS, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Item 12: Provide an overview of ambulance operations

The Director of Public Safety/Police Chief provided the staff report for this item.

The following member of the public spoke:
Nancy Twomey

Item 12 continued...

Discussion among the City Council and staff included discussion of the City Council's desire to keep the residents safe, discussion of the formation of a task force to address this issue based on data, not emotion, discussion of the amount of overtime historically needed by the ambulance service and the need to reduce the amount of overtime without cutting services. Additionally, discussion took place regarding budget constraints, having the task force evaluate different service models and metrics, and analyzing the potential of a new revenue stream related to real estate transfers in the City.

No vote required, update only.

Mayor Potter requested a brief recess at this time.

Mayor Potter reconvened the meeting at 7:30 p.m.

PUBLIC HEARING

Council Member Reimers recused herself from this item due to the proximity of the property involved to her family's commercial property and left the meeting at this time.

Item 13: Consideration of an Appeal (APP 19-251) of the denial of a Transient Rental Business License Application for an existing condominium and a Use Permit Amendment (UP 19-411) to allow for the operation of a Transient (Short Term) Rental located on Dolores, 3 SE of 7th in the Service Commercial (SC) Zoning District.

The Associate Planner and the City Attorney provided the staff report for this item.

The Appellant's Attorney, the Appellant and the Appellant's real estate agent provided information for this item.

The City Council requested clarification regarding the real estate agent's review of the property file and if the information prohibiting transient rental of this property was located in that file, and clarification if the Appellant has been using the property as a transient rental and for how long.

Discussion among the City Council and staff included discussion of the difficulty of addressing this issue due to the lengthy process undertaken by the City Council prohibiting transient rentals and the Council not being in favor of potentially making an exception. Additional discussion took place among the City Council regarding the possibility of allowing the rental with a sunset date. Discussion took place regarding the buyer and real estate agent's responsibility to conduct due diligence and review the property file, and discussion of the property owners' continued use as a transient rental even though they were denied the permit.

On a motion by Mayor Pro Tem Richards and seconded by Council Member Theis, the City Council denied the appeal and upheld the Planning Commission's decision to deny the Business License application and Use Permit amendment subject to the Findings for Denial found as attachment 9 to the Staff Report, by the following roll call vote:

AYES: BARON, THEIS, RICHARDS, POTTER
NOES: NONE
ABSENT: NONE
RECUSED: REIMERS

FUTURE AGENDA ITEMS

None at this time.

ADJOURNMENT

Mayor Potter adjourned the meeting at 8:08 p.m.

APPROVED:

ATTEST:

Dave Potter, Mayor

Britt Avrit, MMC
City Clerk

REGULAR MEETING
Thursday, September 3, 2020
5:00 PM

ADJOURNED REGULAR MEETING - ADJOURNED FROM SEPTEMBER 1, 2020

This meeting was held via teleconference due to the Shelter in Place Order issued by Monterey County and Governor Newsom's Executive Order N-29-20

CALL TO ORDER AND ROLL CALL

Mayor Potter called the Carmel-by-the-Sea City Council Meeting to order at 5:00 p.m.

Present: Council Members Reimers, Baron, Theis, Mayor Pro Tem Richards, Mayor Potter

PUBLIC APPEARANCES

None

ORDERS OF BUSINESS

Item 1: Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions and provide direction on savings option.

This item was discussed jointly with the Carmel-by-the-Sea Public Improvement Authority.

The Director of Budgets and Contracts provided the staff report for this item.

The City Council/Public Improvement Authority requested clarification regarding the impact to the City if additional payments are made in the early years.

Discussion among the City Council/Public Improvement Authority and staff included discussion of pushing the payments out a few years to provide the City with a stable payment stream, taking advantage of the low interest rate and discussion of reducing the amount the City will have to pay if Option 1 is chosen. Additional discussion took place regarding not knowing what the future holds with regard to revenues due to the impacts of COVID-19; retail and Transient Occupancy Tax may suffer for several years. The City Council also discussed the importance of paying off the City's debt, and using Fund Balance for debt service either for this issue or for CalPERS.

On a motion by Mayor Potter and seconded by Council Member Baron, the City Council adopted Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions and provided direction on savings option, by the following roll call vote:

AYES: BARON, REIMERS, THEIS, POTTER
NOES: RICHARDS
ABSENT: NONE
ABSTAIN: NONE

ADJOURNMENT

Mayor Potter adjourned the meeting at 5:44 p.m.

APPROVED:

ATTEST:

Dave Potter, Mayor

Britt Avrit, MMC
City Clerk

**CITY COUNCIL SPECIAL MEETING
Tuesday, September 22, 2020
4:00 PM**

This meeting was held via teleconference due to the Shelter in Place Order issued by Monterey County and Governor Newsom's Executive Order N-29-20

CALL TO ORDER AND ROLL CALL

Mayor Potter called the meeting to order at 4:08

Present: Council Members Reimers, Baron, Theis, Mayor Pro Tem Richards, Mayor Potter

PUBLIC APPEARANCES

None

CLOSED SESSION

Item A: Public Employee Performance Evaluation pursuant to Government Code Section 54957; Title: City Administrator

ADJOURNMENT

APPROVED:

Dave Potter, Mayor

ATTEST:

Britt Avrit, MMC
City Clerk



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Britt Avrit, City Clerk

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Monthly Reports for August: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report

RECOMMENDATION:

Review and receive monthly reports.

BACKGROUND/SUMMARY:

This is a monthly series of reports.

Based upon Council direction provided during the April 7, 2020 meeting, staff have added a new section to the monthly staff report regarding the home mail delivery program.

The invoice submitted by Peninsula Messenger Service for the month of August shows 178 residents are receiving mail delivery service.

FISCAL IMPACT:

None for this action.

PRIOR CITY COUNCIL ACTION:

Monthly approvals.

ATTACHMENTS:

- Attachment #1 - City Administrator Contract Log
- Attachment #2 - Community Planning & Building Report
- Attachment #3 - Police, Fire & Ambulance Report
- Attachment #4 - Public Records Act Request Logs
- Attachment #5 - Public Works and City Forester's Report for August 2020

City Administrator Contract Log

Nothing to report for August, 2020



CITY OF CARMEL-BY-THE-SEA

Monthly Report

August 2020

Community Planning and Building Department

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie R. Waffle, AICP, Acting Community Planning & Building Director
SUBMITTED ON:	September 21, 2020
APPROVED BY:	Chip Rerig, City Administrator

AUGUST 2020 – DEPARTMENT ACTIVITY REPORT

I. PLANNING APPLICATIONS:

In August of 2020, **36** planning permit applications were received.

II. BUILDING PERMIT APPLICATIONS:

In August of 2020, **35** Building Permit applications were received.

III. CODE COMPLIANCE CASES:

In August of 2020, **5** new code compliance cases were initialized.

IV. ENCROACHMENT APPLICATIONS:

In August of 2020, **35** encroachment permit applications were received.

V. YEAR-TO-DATE TRENDS

Table 1 includes the August 2020 totals, for planning and building permit applications, encroachments and code compliance cases with a comparison to August 2019 totals. As shown in the table, in 2020 there was a **36% decrease** in planning permit applications, a **30% decrease** in building permit applications, **64% decrease** in code compliance cases, and a **62% increase** in encroachment permit applications compared to the same period 2019.

Table 1. Permit Application Totals

	<u>Planning</u>	<u>Building</u>	<u>Code Compliance</u>	<u>Encroachments</u>
2019 Totals	356	497	298	151
2020 Totals	228	347	106	244
% Difference	-36%	-30%	-64%	62%



Planning Permit Report

08/01/2020 - 08/31/2020

Permit #	Permit Type	Project Description	Address/ Location	Date Received	Date Approved	Status
20257	Business License	retail, selling of vintage decorative items & services	Dolores 5 SE of 5th	8/31/2020		Denied
20256	Business License	This business license BL 20-256 (Arhaus) authorizes use of a 4,204 square foot commercial space offering the following goods and services. a. Primary Use: This use is classified as a Home Furnishing Store (NAICS 442299): i. This U.S. industry comprises establishments primarily engaged in retailing new home furnishings.	Carmel Plaza, ocean & Mission Streets, Suite 105	9/1/2020	9/11/2020	Approved
20255	Authorized Work	The replacement of two existing stone retaining walls with two new Belgary Delmir block with a stone cap. New retaining walls will be 18" to 24 " in height. Contractor: Jose Escobedo. Phone: (831) 809-1668. PG&E 811 Ticket Number: W024800405	Dolores Street, 3 NW of 2nd Avenue	7/27/2020		Corrections Required
20254	Design Review	Outdoor dining (two tables in courtyard)	WS Mission bet 5 & 6	8/28/2020		In Review
20253	Design Study	driveway and pavers	Junipero 4 NW of 10th			Pending Assignment
20223	Landscape Plan Check/Inspection	Revised landscape plan	SWC Camino Real & 7th	8/28/2020		In Review
20222	Preliminary Site Assessment	Demo rear portion of (E) SFR and rebuild as two story addition. Demo carport and rebuild 1 car garage	Mission 3 SW of Rio Road	8/27/2020		In Review
20221	Design Study	Exterior alterations not affecting existing floor area per the attached drawings.	Palou 4 NW of Casanova, Carmel, CA 93921	8/20/2020		In Review

20220	Preliminary Site Assessment	Demo existing single story family residence. Constrution of new SFD	SE Corner of 3rd and Santa Fe	8/25/2020		In Review
20219	Design Study	1. This approval authorizes a revision to a previously approved Design Study Application (DS 19-302) for the installation of three (3) skylight to be located on the west elevation; the skylights will not be visible from the street. No other changes are authorized to the previously approved Design Study (DS 19-302) other than the addition of the 3 new skylights. The construction shall be consistent with the plan set dated received on August 26, 2020 prepared by Adam Jeselnick except as modified by the conditions of approval.	Perry Newberry 2 SW of 4th	8/26/2020	9/10/2020	Approved
20218	Design Study	Construct new 118 SF 2nd fllor deck above existing proch	Ocean Avenue 2 NW of Guadalupe Street			Pending Assignment
20217	Business License	This business license authorizes use of an office space located in the Central Commercial (CC) Zoning District providing business and professional services including real estate brokerage. 2. Primary Use: This use is classified as an Office of a Real Estate Agent or Broker (NAICS 531210): Engaged in acting as agents and/or brokers in one or more of the following: (1) selling real estate for others; (2) buying real estate for others; and (3) renting real estate for others.	El Paseo Building - Dolores & 7th	8/31/2020	9/8/2020	Approved
20216	Business License	New Hair Salon	Pantiles Court - Dolores bet 5th and 6th	8/25/2020		Closed
20215	Design Review	Install permanant retractable trellis on Rooftop	NW Corner of Juipero and 6th	8/27/2020		In Review
20214	Design Review	Install new awnings on three windows - same color	NE Conrer of Dolores and 7th	8/25/2020		In Review

20213	Business License	Mental Health Counseling via Telehealth	5 NE 5th on Lincoln - rear unit	8/18/2020	8/21/2020	Approved
20212	Preliminary Site Assessment	Remodel and addition to existing one story SFD. Addition includes new second story floor	San Antonio 5 SE of 8th	8/18/2020		In Review
20211	Sign	Sign for new Art Gallery	NW Corner of 6th and Dolores	9/2/2020		Corrections Required
20210	Business License	This business license BL 20-210 (Creason's Fine Art) authorizes use of an existing retail space offering the following goods and services. a. Primary Use: This use is classified as a Art Gallery (NAICS 453920): i. This industry comprises establishments primarily engaged in retailing original and limited edition art works. Included in this industry are establishments primarily engaged in displaying works of art for retail sale in art galleries. ii. The use features a single artist representing at least 80 percent of the art for sale in the use.	NW Corner of 6th and Dolores	9/2/2020	9/8/2020	Approved
20209	Sign	Business sign for La Tierra Home and Ranch	SE Corner of San Carlos and 7th - Bell Tower court	8/14/2020	9/11/2020	Approved
20208	Design Review	This approval of Design Review (DR 20-208) authorizes a re-roof of the Edgemere Cottages located at San Antonio 4 SE 13th in the Single Family (R-1) Zoning District as depicted on the plans and scope of work prepared by Alta-Cal Roofing dated received by Community Planning & Building on August 14, 2020, unless modified by the conditions of approval contained herein. The re-roof shall be done in-kind and does not authorize modifications or changes in design, forms, color, texture, and/or materials.	Edgemere Cottages, San Antonio 4 SE of 13th	8/14/2020	8/19/2020	Approved
20207	Preliminary Site Assessment	PSA for Property	Scenic Road 6 SE of Ocean Avenue	8/13/2020		In Review
20206	Business License	This business license authorizes the use of a 900 square foot retail space offering the following goods and services:	Ocean & Mission	8/13/2020	8/20/2020	Approved

		a) Primary Use: This use is classified as a Clothing and Clothing Accessory Store (NAICS 448120): This approval allows the retail sale of clothing and accessories including casual wear, formal wear, underwear, handbags, belts and similar items of apparel. Other goods or services not directly related to the authorizations listed in conditions #1 are prohibited.	(Carmel Plaza suite 116)			
20205	Design Study	New 2 story residence with basement, natural materials, wood and stone, native plantings and natural landscape		8/6/2020		Pending Assignment
20204	Historic Evaluation	Historic Determination	San Antonio	8/11/2020		In Review
20203	Design Study	1) The construction of two new 5' tall stone columns at the entry gate facing Casanova Street. 2) The repair of the portion of the existing front steps located on the property (the 1st 3 feet only) leading to the front gate facing Casanova Street. If repairs will be made to the portion of the stairs located in the right-of-way, the applicant shall submit a permanent encroachment permit for the repair of an encroachment permit located partially in the City-owned right-of-way.	NE corner of Casanova and 8th Avenue	8/11/2020	9/10/2020	In Review
20202	Design Review	This approval authorizes window and door modifications to an existing single family residence. The authorized changes include the removal of three windows and the addition of 3 new windows near the location of the old window and the replacement of a sliding door to a French door. Additional project components include an interior kitchen remodel. The project shall be in substantial compliance with the project plans prepared by Luke Ingram, dated received by the Community Planning & Building Department on August 24, 2020 unless modified by the conditions of approval.	Santa Rita 4 SE of 5th	8/24/2020	8/25/2020	Approved
20201	Sign	New aluminum blade sign	Ocean Avenue & Mission Street, Suite	8/7/2020	9/14/2020	Approved

			105 (Carmel Plaza)			
20200	Design Review	The painting of the exterior of the commercial building Sherwin Williams "Network Grey" and the roof will remain unpainted.	Lincoln 2NE of 6th	8/7/2020	9/18/2020	Approved
20199	Design Review	Outdoor wine tasting at Hampton Court				In Review
20198	Preliminary Site Assessment		Camino Real 3 SW of 13th	8/6/2020		Closed
20197	Historic Determination	Remodel of an existing single level family dwelling with basement, lower floor and main floor		8/6/2020		In Review
20196	Design Study	Development of new two story single family dwelling with one car garage. New stone patio, driveway and walkways set on sand.	Mission 5 NW of Santa Lucia	8/5/2020		In Review
20195	Design Study	This approval authorizes replacement of an existing deck at the rear of the residence with a new redwood deck with an open trellis covering the deck; the deck is proposed to have an open cable railing. Additional project components include: modifications to the roof form at the rear of the residence (new gable connecting the roof to the trellis), the addition of new stairs and landing for the deck, the construction of new steps and stairs to access the kitchen. The project shall be consistent with the plans prepared by Charles Mandaruago dated received by the Community Planning and Building Department on September 3, 2020 unless modified by the Conditions of Approval herein.	1st Ave 2 SE of Lobos	8/11/2020	9/18/2020	Approved
20194	Preliminary Site Assessment	Demolish existing residence and build new single family residence	Lincoln SE Corner of 3rd			In Review
20193	Sign	New Business Sign	Dolores 5 SE of 5th	8/4/2020	8/24/2020	Approved

Total Records: 36

9/21/2020



Building Permit Report

08/01/2020 - 08/31/2020

Permit #	Date Submitted	Date Approved	Project Description	Valuation	Permit Type	Property Location
200348	8/31/2020	9/10/2020	Residential. Replace approx 40' of main water line from meter to house and install two house bibs. Contact: Poe's Plumbing (831) 710-2204	3,241	Plumbing	5000 Monterey St
200347	8/31/2020	8/31/2020	Residential. Installation of new water heater. Contact: Chris Wilson Plumbing (831) 393-9321	2,800	Plumbing	Carmelo 3 SE of Ocean
200346	8/31/2020		Residential. Installation of roof mounted 8.16 KW photovoltaic system. Contact: Tesla (805) 821-1010	18,033	Electrical	Perry Newberry 2 SW of 4th
200345	8/31/2020	8/31/2020	Residential. Remove (e) cedar shakes and replace with (n) cedar shakes. Assembly to meet class "A" fire retardant requirements. Contact: Premo Roofing Co (831) 443-3605	35,950	Roofing	12th 2 SW of Carmelo
200344	8/31/2020		Residential. Add a new retaining wall to stabilize soil erosion.	200,000	Building	NWC of 2nd and Casanova
200343	8/27/2020		Residential. Add toilet and sink to (e) closet and install door to convert to bathroom.	900	Plumbing	NW Corner Junipero & 3rd
200342	8/26/2020		Residential. Roof mounted (12) panels of PV; (4.08) KW; (1) new energy storage system	19,016	Electrical	Lobos 3 NW of 1st
200341	8/25/2020	8/25/2020	Residential. Tankless water heater installation. Domestic water repipe. Contact: JD's Plumbing (831) 394-3100	5,000	Plumbing	Casanova 3 SW of 13th
200340	8/25/2020	8/25/2020	Residential. Rewire of whole residence and replacement of new meter panel. Contact: Les Flores Electric (831) 236-9002	10,000	Electrical	Casanova 3 SW of 13th
200339	8/24/2020	8/24/2020	Residential. Interior wainscot trim at garage walls. No electrical or plumbing work impacted. Contact: Lehman Design Studio (831) 747-4718	0	Exempt Work	NE Corner Forest & 7th

200338	8/24/2020	8/24/2020	Residential. Remove and replace 100 amp meter main electrical panel with new panel in-kind. Contact: Searle Electric (831) 435-0458	1,000	Electrical	SE Corner of Crespi and Flanders
200337	8/21/2020		Residential. Convert 402 sf Guest House to ADU by adding stove. 335 sf interior remodel of main house. Install outdoor shower.	50,000	Building	Junipero 4 NW of Vista
200336	8/21/2020		Residential. Remodel 962 SF (e) house. Construct 481 SF addition at rear. Remove (e) carport and construct new 220 sf one car garage.	500,000	Building	Torres 3 SE of 1st
200335	8/21/2020	8/21/2020	Residential. Replace main electrical panel with 125 amp panel. Contact: Ringer Electric (831) 236-2770	2,000	Electrical	4910 Monterey St
200334	8/19/2020		Residential. Replace one existing two-story 1,802 square foot single family residence with a new two-story 2,269 square foot single family residence.	440,350	Building	Scenic Road 3 SE of 9th
200333	8/17/2020	9/16/2020	Residential. Addition of air conditioning to existing furnace. Contact: R & S Heating & Sheet Metal (831) 641-0508	9,689	Mechanical	NE Corner of Lincoln & 10th
200332	8/17/2020		Residential. Remodel of kitchen, living room, and downstairs bonus room. Addition of skylights to bedrooms. Work to include electrical, plumbing, and other work. Windows and doors to be replaced.	100,000	Building	San Carlos 2 NE of Vista
200331	8/13/2020	8/21/2020	Commercial. Installation of 60a 240v circuit for electric kilns. Contact: JRBC Electric (831) 659-0653	1,000	Electrical	NE Corner of Mission & 10th, Unit 18
200330	8/12/2020		Residential. Addition of a 400 sf ADU with bath and shower. Remove shower at main house.	60,000	Building	Carpenter 1 NW of 2nd
200329	8/11/2020		Residential. Interior remodel of (e) apartment	15,000	Building	Ocean 3 NE of Lincoln
200328	8/11/2020		Residential. Exterior changes including re-configuring of three windows and replacing one door. Remodel 224 sf of (e) kitchen, reconfigure heat ducting and add a supplemental furnace.	15,000	Building	Santa Rita 4 SE of 5th

200327			Test permit	0	Building	Monte Verde between Ocean & 7th
200326	8/11/2020	8/11/2020	Residential. Replace leaking water heater. Install 50 gallon Bradford White water heater. Contact: A & R Plumbing (831) 394-7221	2,000	Plumbing	Dolores 2 SW of 12th
200325	8/11/2020	8/11/2020	Residential. Replace leaking water heater. Install 50 gallon Bradford White water heater. Contact: A & R Plumbing (831) 394-7221	2,000	Plumbing	Junipero 2 SW of 11th
200324	8/10/2020	8/10/2020	Residential. Replace water heater. Install new 50 gallon natural gas Bradford White water heater. Contact: A & R Plumbing (831) 394-7221	1,500	Plumbing	Guadalupe 2 SE of 7th
200323	8/10/2020	8/10/2020	Residential. Replace water service from the meter to the house, approx 40' of line. Contact: Chris Wilson Plumbing (831) 393-9321	4,800	Plumbing	Casanova 3 NE of 8th
200322	8/10/2020	8/31/2020	Residential. Remove (e) wood shingles, replace with new class "A" fire rated roofing system utilizing prefabricated wood shingles. Contact: Alta-Cal Roofing (831) 521-8070	40,000	Building	San Antonio 4 SE of 13th
200321	8/7/2020	8/10/2020	Residential. Remove and replace roof with Certainteed Landmark TL composition roofing in color Country Gray. Contact: Dority Roofing (831) 375-8158	33,215	Building	Carmelo 2 NE of 4th
200320	8/7/2020	9/9/2020	Residential. Balcony floor is leaking: 5ft by 10ft : 1) remove existing saltillo tile and underlayment 2) repair any wood damage to ply 3) replace water proof membrane 4) install new Saltillo tile or exterior porcelan tile. Contact: Lone Oak Construction (831) 801-4981	8,000	Building	Monte Verde 4 SW of 12th
200319	8/3/2020	8/7/2020	Residential. Replace four second-story west facing windows with four windows which are wood unclad in the same opening. Replace one north facing second story single pane fixed glass window with one double pane fixed glass window. Replace two north facing second-story single pane french door with two new french doors which are wood unclad in the same opening. Replace three single pane glass with three identical double pane	0	Building	Ocean 3 NE of Lincoln

			glass. Replace one north facing second story bedroom single pane french glass door with new french glass door which will be wood unclad. Replace one single pane glass square in-kind. Replace carpet with laminate floor. Paint interior. Contact: David Bider (650) 854-4154			
200318	8/6/2020	8/21/2020	Residential. Building repairs - replace 2 (e) beams damaged by termites, in-kind replacement. Contact: Josh Nelson (831) 747-4134	5,000	Building	NE Corner San Carlos & 8th
200317	8/5/2020		Residential. Remove and replace 2nd story balcony waterproofing & tile. Remove & replace damaged drywall and tile at lower bath tub. Contact: Millette Construction Inc (831) 277-8101	13,000	Building	NW Corner Junipero & 11th
200316	8/5/2020	8/6/2020	Commercial. Replacement of gas line. Contact: RK Wilson Plumbing (831) 899-4864	2,500	Plumbing	Ocean 3 SW of Lincoln
200315	8/4/2020	8/4/2020	Residential. Remove a 40 gallon natural gas water heater from laundry room and install a new 199K BTU Navien NPE-240A-NG tankless water heater on exterior wall of laundry room. Contact: Precision Plumbing Contractors (831) 649-1990	7,250	Plumbing	Carpenter 2 NW of 1st
200314	8/4/2020	8/4/2020	Residential. To demolish ceiling drywall only to expose framing for architect to review. Contact: House and Associates (831) 601-7656	500	Building	9th 2 NE of Lincoln

Total Records: 35

9/21/2020



Code Compliance Report

08/01/2020 - 08/31/2020

Case #	Case Type:	Status	Location	Problem Description	Date Received	Date Closed
20111	Building Violation	Open	NW Corner of Lincoln and 7th	Construction without permit	8/26/2020	
20110	Planning/Building Violation	Open	Torres 2 SE of 1st	Construction without permit	8/18/2020	
20109	Right of way Violation	Open	Junipero 2 SE of 8th	Driving replacement without permit	8/13/2020	1/1/1900
20108						
20107	Building Violation	Open	NEC San Carlos and 8th	Deck construction and repair without permit	8/5/2020	

Total Records: 5

9/21/2020



Encroachment Permit Report

08/01/2020 - 08/31/2020

Permit #	Permit Type	Date Submitted	Project Description	Property Location	Date Issued	Status
200244	Temp Ench	8/31/2020	Replacement of sewer lateral utilizing pipe bursting. 811# W024100268. Contact: Rooter King (831) 394-5315	Camino Real 3 NE of Ocean	8/31/2020	Approved
200243	Temp Ench	8/31/2020	Replace sewer lateral using pipe bursting. 811 #X024102153. Contact: Rooter King (831) 394-5315	Vizcaino 6 SW of Mountain View	8/31/2020	Approved
200242	Temp Ench	8/31/2020	Park a storage trailer in driveway for approximately 1-2 months			In Review
200241	Temp Ench	8/27/2020	Replace sewer lateral using pipe bursting. 811# W024000125. Contact: Rooter King (831) 394-5315	Lobos 2 NE of 4th	9/8/2020	Approved
200240	Temp Ench		Outdoor Seating in the Public Way			
200239	Temp Ench		Outdoor Seating in the Public Way for Wine Tasting		8/25/2020	
200238	Temp Ench		Outdoor Seating in the Public Way	Dolores 5 SE of 5th	8/24/2020	
200237	Temp Ench	8/24/2020	Tie in at existing pole and overlash approx 628' of new cable along 7 existing poles. Comcast Job #JB404210	Santa Fe & 2nd		In Review
200236	Temp Ench	8/20/2020	Replacement of sewer lateral. 811# W022500051-00W. Contact: Easy Drains Plumbing (831) 521-6882	Lincoln 3 SE of 4th	9/10/2020	Approved
200235	Temp Ench		Outdoor Seating in the Public Way	SEC Dolores & 5th	8/22/2020	
200234	Temp Ench	8/20/2020	PG&E to perform all hot tie-in work for conduit and install new cable and meter for new single family residence. PM#35112925. Contact: PG&E (831) 521-6282	SW Corner Camino Real & 7th	8/20/2020	Approved
200233	Temp Ench	8/20/2020	PG&E to perform gas cutoff at main. PM#35186309. Contact: PG&E (831) 521-6282	Carmelo 2 NW of 9th	8/20/2020	Approved
200232	Temp Ench	8/17/2020	PG&E to deactivate gas service. PM #35186964. Contact: PG&E (831) 521-6282	5th 2 NW of San Carlos	8/17/2020	Approved

200231	Temp Ench					
200230	Temp Ench	8/14/2020	Replace sewer lateral using pipe bursting. Contact: Rooter King (831) 394-5315	San Antonio 6 SW of 8th	8/14/2020	Approved
200229	Temp Ench	8/13/2020	Unload 30' I-beam from truck. Block two parking spaces at intersection for use. Contact: Giles Healey (831) 601-1152	Monte Verde 3 NE of 6th	8/14/2020	Approved
200228	Temp Ench					
200227	Temp Ench	8/11/2020	Replacement of sewer lateral using pipe bursting. Contact: Rooter King (831) 394-5315	Lincoln 5 SE of 12th	8/11/2020	Approved
200226	Temp Ench		Outdoor wine tasting in the public way	Dolores btwn Ocean & 6th		
200225	Temp Ench		Outdoor wine tasting in Picadilly Park			
200224	Temp Ench		Outdoor Seating in the Public Way	SEC Ocean & Lincoln		
200223	Temp Ench		Outdoor wine tasting in the public way for Caraccioli Cellars	E/S Dolores btwn Ocean & 7th		
200222	Temp Ench	8/7/2020	Sewer lateral repair, installation of SRV and BWV. Contact: Easy Drains Plumbing (831) 521-6882	Lincoln 2 SW of 5th	8/17/2020	Approved
200221	Temp Ench	8/6/2020	Install backwater valve and clean out. Replace approx 30' of cast iron and clay pipe. Opening 4'x5' in street. Contact: Brad's Plumbing (831) 917-4009	NE Corner Forest & 8th	8/27/2020	Approved
200220	Temp Ench	8/6/2020	Replace approx 20' of sewer lateral on property then replace 40' of sewer lateral to street with a 4'x5' opening in street. Back fill with base rock. Contact: Brad's Plumbing (831) 917-4009	Torres 5 NE of 5th	8/11/2020	Approved
200219	Temp Ench	8/6/2020	Asphalt patch two holes, one 4'x4' and one 10'x5'. CalAm job #0304 and 0463. Contact: Coastal Paving and Excavating (831) 809-8991	Mission 125' and 150' South of 1st	8/11/2020	Approved
200218	Driveway	8/6/2020	Replace old driveway with new driveway. Replace and extend retaining wall on the NE upper edge to provide a safe turnaround	26282 Atherton Drive		In Review
200217	Temp Ench	8/5/2020	10'x10' asphalt patch for CalAm. Job #0305. Contact: Coastal Paving and Excavating (831) 809-8991	Junipero 200' South of 3rd	8/5/2020	Approved

200216	Temp Ench	8/5/2020	G-51G. Deactivate 1/2" HP plastic service at main. Contact: PG&E (925) 701-1778	San Antonio 2 SW of 5th	8/5/2020	Approved
200215	Temp Ench	8/5/2020	Replace sewer lateral using pipe bursting. Contact: Rooter King (831) 394-5315	Santa Fe 3 NW of 2nd	8/5/2020	Approved
200214	Temp Ench	8/5/2020	Sewer lateral replacement, install backwater valve and sewer release valve. Contact: Easy Drains (831) 521-6882	Casanova 3 NW of 11th	8/5/2020	Approved
200213	Temp Ench		Replace existing asphalt driveway with Belgard Cambridge Cobble Pavers from garage to within 4' of City Berm. Widen driveway lightly on north side, but remove a large area of asphalt on south side to be left as green space			
200212	Temp Ench	8/3/2020	Replacement of sewer lateral. 811# Contact: Rooter King (831) 394-5315	NW Corner Santa Fe & 1st	8/3/2020	Approved
200211	Temp Ench	8/3/2020	Replacement of sewer lateral. 811# Contact: Rooter King (831) 394-5315	Camino Real 2 SW of 9th	8/3/2020	Approved
200210	Temp Ench	8/3/2020	Replacement of sewer lateral. 811# Contact: Rooter King (831) 394-5315	Santa Fe 5 SW of 5th	8/3/2020	Approved

Total Records: 35

9/21/2020



CITY OF CARMEL-BY-THE-SEA

Monthly Report

August 2020

Public Safety

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Paul Tomasi, Public Safety Director
SUBMITTED ON:	September 14, 2020
APPROVED BY:	Chip Rerig, City Administrator

AMBULANCE REPORT

Summary of Carmel Fire Ambulance August Calls for Service

AMBULANCE PERFORMANCE MEASURE

The performance goal for Code-3 (life threatening emergency-lights & siren) ambulance calls with a response time of 5 minutes or less from dispatch to arrival is 95%. For the month of August 2020 the ambulance was able to meet the performance measure. The response time was 100% with (0) code-3 calls over 5 minutes.

34 Calls for service in CBTS Average response time: 3:02 min.
26 Code 3 calls for service –No call over 5:00 min.

MONTEREY FIRE REPORT

Summary of Monterey Fire August Calls for Service

FIRE PERFORMANCE MEASURE

The performance goal for Code-3 (life threatening emergency-lights & siren) fire calls with a response time of 5 minutes or less from dispatch to arrival is 95%. For the month of August 2020 the fire department was able to meet the performance measure. The response time was 100% with (0) code-3 calls over 5 minutes.

49 total calls for service in CBTS Average response time: 3:16 min.
39 total Code-3 calls

BEACH FIRES

There were 8 illegal beach fires recorded during the month of August: Due to pandemic a significant amount of patrol time has been spent on the beach. This along with increased signage has reduced the number of illegal beach fires.



RESPONSE SUMMARY REPORT BY DISTRICT

27015 CARMEL-BY-THE-SEA FIRE AMBULANCE

Alarm Dates: 8/01/2020 to 8/31/2020



MEDICAL RESPONSES CARMEL CITY

INCIDENT	PRIORITY	DATE	ALARM	ARRIVAL	RESPONSE	CALL CLEAR	STREET
200801-CFA00839	Emergent	8/1/2020	12:37:15 PM	12:41:10 PM	0:03:55	1:06:00 PM	8TH AVE / SCENIC RD
200802-CFA00844	Emergent	8/2/2020	5:15:00 PM	5:18:00 PM	0:03:00	5:45:00 PM	MISSION/3RD
200804-CFA00851	Emergent	8/4/2020	2:25:00 PM	2:26:58 PM	0:01:58	3:15:00 PM	JUNIPERO AVE / 4TH AVE
200805-CFA00855	Emergent	8/5/2020	4:58:07 PM	5:03:03 PM	0:04:56	6:15:00 PM	5TH AVE / SANTA FE ST
200807-CFA00861	Emergent	8/7/2020	11:14:24 AM	11:17:18 AM	0:02:54	11:52:00 AM	CARPENTER ST / 4TH AVE
200809-CFA00866	Emergent	8/9/2020	7:44:37 AM	7:46:55 AM	0:02:18	8:06:00 AM	6TH AVE / MISSION ST
200809-CFA00869	Emergent	8/9/2020	5:05:36 PM	5:06:41 PM	0:01:05	5:58:16 PM	LINCOLN ST / 8TH AVE
200810-CFA00872	Emergent	8/10/2020	7:40:55 AM	7:45:00 AM	0:04:05	8:34:28 AM	SAN ANTONIO AVE / 13TH AVE
200810-CFA00874	Emergent	8/10/2020	12:22:55 PM	12:23:16 PM	0:00:21	1:14:08 PM	MISSION ST / 4TH AVE
200812-CFA00878	Emergent	8/12/2020	3:39:05 PM	3:41:03 PM	0:01:58	3:45:36 PM	6TH AVE / MISSION ST
200815-CFA00889	Emergent	8/15/2020	5:55:06 PM	5:58:02 PM	0:02:56	7:00:41 PM	DOLORES ST / 13TH AVE
200816-CFA00893	Emergent	8/16/2020	9:54:34 AM	9:56:48 AM	0:02:14	11:00:00 AM	LINCOLN ST / 6TH AVE
200816-CFA00894	Emergent	8/16/2020	12:34:30 PM	12:38:36 PM	0:04:06	12:45:06 PM	SAN CARLOS ST / 10TH AVE
200816-CFA00896	Emergent	8/16/2020	8:47:58 PM	8:50:05 PM	0:02:07	9:26:00 PM	OCEAN AVE / LINCOLN ST
200817-CFA00897	Emergent	8/17/2020	9:21:54 AM	9:24:09 AM	0:02:15	9:52:00 AM	MISSION ST / 10TH AVE
200817-CFA00899	Emergent	8/17/2020	11:31:11 AM	11:35:28 AM	0:04:17	11:46:24 AM	OCEAN AVE / SCENIC RD
200817-CFA00904	Emergent	8/17/2020	8:42:08 PM	8:45:18 PM	0:03:10	8:49:13 PM	CASANOVA ST / 9TH AVE
200821-CFA00915	Emergent	8/21/2020	11:53:49 AM	11:56:43 AM	0:02:54	12:42:00 PM	13TH AVE / SAN CARLOS ST
200822-CFA00919	Emergent	8/22/2020	1:32:38 PM	1:34:05 PM	0:01:27	1:35:31 PM	7TH AVE / SAN CARLOS ST
200824-CFA00921	Emergent	8/24/2020	1:20:41 PM	1:24:57 PM	0:04:16	1:27:35 PM	12TH AVE / SAN ANTONIO AVE
200827-CFA00931	Emergent	8/27/2020	12:33:59 PM	12:37:30 PM	0:03:31	12:41:26 PM	JUNIPERO AVE / 10TH AVE
200828-CFA00936	Emergent	8/28/2020	7:35:22 AM	7:40:00 AM	0:04:38	8:39:01 AM	MISSION ST / 5TH AVE
200828-CFA00939	Emergent	8/28/2020	7:56:41 PM	7:58:13 PM	0:01:32	8:24:00 PM	DOLORES ST / 5TH AVE
200829-CFA00941	Emergent	8/29/2020	12:44:04 PM	12:48:25 PM	0:04:21	12:50:29 PM	LINCOLN ST / 7TH AVE
200829-CFA00942	Emergent	8/29/2020	2:07:35 PM	2:10:25 PM	0:02:50	3:15:00 PM	DOLORES ST / 13TH AVE
200830-CFA00946	Emergent	8/30/2020	7:56:27 PM	7:59:00 PM	0:02:33	8:03:39 PM	2ND AVE / SANTA FE ST

NUMBER OF EMS INCIDENTS 26 AVERAGE RESPONSE 0:02:55

FIRE RESPONSES CARMEL CITY

INCIDENT	PRIORITY	DATE	ALARM	ARRIVAL	RESPONSE	CALL CLEAR	STREET
200804-CFA00852	Non-Emergent	8/4/2020	7:53:12 PM	7:56:35 PM	0:03:23	8:05:00 PM	3RD AVE / LINCOLN ST
200810-CFA00871	Emergent	8/10/2020	7:09:31 AM	7:13:37 AM	0:04:06	7:18:36 AM	SAN ANTONIO AVE / OCEAN AVE
200813-CFA00883	Non-Emergent	8/13/2020	3:05:55 PM	3:10:55 PM	0:05:00	3:19:41 PM	N CARMELO ST / 2ND AVE
200817-CFA00899	Emergent	8/17/2020	11:31:11 AM	11:35:28 AM	0:04:17	11:46:24 AM	OCEAN AVE / SCENIC RD
200818-CFA00907	Emergent	8/18/2020	6:00:52 PM	6:03:51 PM	0:02:59	6:04:12 PM	LINCOLN ST / 10TH AVE
200825-CFA00924	Emergent	8/25/2020	9:17:10 AM	9:21:17 AM	0:04:07	9:24:06 AM	CASANOVA ST / 9TH AVE
200830-CFA00944	Non-Emergent	8/30/2020	8:31:56 AM	8:34:42 AM	0:02:46	8:41:04 AM	LINCOLN AND 7TH
200830-CFA00946	Emergent	8/30/2020	7:56:27 PM	7:59:00 PM	0:02:33	8:03:39 PM	2ND AVE / SANTA FE ST

NUMBER OF FIRE INCIDENTS 8 AVERAGE RESPONSE 0:03:41

TOTAL CARMEL CITY INCIDENTS 34 TOTAL AVERAGE RESPONSE TIME 0:03:02

RESPONSES BY DISTRICT							
INCIDENT	PRIORITY	DATE	ALARM	ARRIVAL	RESPONSE	CALL CLEARED	STREET

BIG SUR

INCIDENT							
200808-CFA00865	Emergent	8/8/2020	8:03:12 PM	8:47:33 PM	0:44:21	10:16:24 PM	46205 CLEAR RIDGE RD
200813-CFA00884	Emergent	8/13/2020	6:24:50 PM	6:59:34 PM	0:34:44	7:39:40 PM	43801 HWY 1
Subtotal		2	Average Response Time		0:39:33		BIG SUR

CARMEL HIGHLANDS

INCIDENT							
200801-CFA00838	Emergent	8/1/2020	12:04:33 PM	12:12:00 PM	0:07:27	12:21:36 PM	1 POINT LOBOS STATE RESER
200801-CFA00842	Emergent	8/1/2020	5:42:08 PM	5:51:32 PM	0:09:24	6:12:21 PM	47 YANKEE POINT DR
200829-CFA00940	Emergent	8/29/2020	11:25:37 AM	11:34:24 AM	0:08:47	12:43:29 PM	240 HWY 1
Subtotal		3	Average Response Time		0:08:33		Carmel Highlands

CYPRESS FIRE

INCIDENT							
200803-CFA00846	Emergent	8/3/2020	11:18:02 AM	11:24:30 AM	0:06:28	11:25:54 AM	26212 SCENIC RD
200803-CFA00848	Emergent	8/3/2020	5:35:01 PM	5:40:35 PM	0:05:34	6:35:00 PM	5 CROSSROADS MALL
200803-CFA00849	Emergent	8/3/2020	10:10:16 PM	10:17:00 PM	0:06:44	10:19:16 PM	2310 BAY VIEW AVE
200805-CFA00853	Emergent	8/5/2020	10:02:14 AM	10:07:38 AM	0:05:24	11:26:42 AM	4000 RIO RD
200805-CFA00854	Emergent	8/5/2020	1:25:00 PM	1:29:00 PM	0:04:00	2:09:00 PM	4000 RIO RD
200806-CFA00857	Emergent	8/6/2020	10:15:13 AM	10:21:05 AM	0:05:52	11:10:56 AM	25960 VIA MARGARITA
200806-CFA00858	Emergent	8/6/2020	1:50:43 PM	1:57:20 PM	0:06:37	2:36:06 PM	4380 CARMEL VALLEY RD
200806-CFA00859	Emergent	8/6/2020	4:11:21 PM	4:15:05 PM	0:03:44	4:20:36 PM	HWY 1 / 3RD AVE
200806-CFA00860	Emergent	8/6/2020	4:40:30 PM	4:42:50 PM	0:02:20	5:13:15 PM	HWY 1 / OCEAN AVE
200808-CFA00862	Emergent	8/8/2020	7:43:42 AM	7:49:12 AM	0:05:30	8:01:46 AM	3226 CAMINO DEL MONTE
200809-CFA00868	Emergent	8/9/2020	3:49:12 PM	3:54:31 PM	0:05:19	4:23:00 PM	5 CROSSROADS MALL
200810-CFA00873	Emergent	8/10/2020	10:25:57 AM	10:30:00 AM	0:04:03	11:49:54 AM	3722 THE BARNYARD
200810-CFA00875	Emergent	8/10/2020	7:02:14 PM	7:06:48 PM	0:04:34	7:17:30 PM	HWY 1 / HOLMAN HWY
200812-CFA00876	Emergent	8/12/2020	2:38:15 AM	2:44:38 AM	0:06:23	3:08:22 AM	26245 CARMEL RANCHO BLVD
200813-CFA00880	Emergent	8/13/2020	8:46:41 AM	8:53:27 AM	0:06:46	9:48:56 AM	3850 RIO RD
200815-CFA00887	Emergent	8/15/2020	12:22:50 PM	12:28:13 PM	0:05:23	12:36:38 PM	26200 CARMELO ST
200815-CFA00888	Emergent	8/15/2020	5:14:19 PM	5:16:26 PM	0:02:07	5:40:00 PM	25207 HATTON RD
200825-CFA00925	Emergent	8/25/2020	9:31:41 AM	9:36:32 AM	0:04:51	10:23:14 AM	26245 CARMEL RANCHO BLVD
200827-CFA00929	Emergent	8/27/2020	8:26:45 AM	8:31:46 AM	0:05:01	9:12:00 AM	26135 CARMEL RANCHO BLVD
200827-CFA00933	Emergent	8/27/2020	5:01:57 PM	5:07:35 PM	0:05:38	5:13:30 PM	24308 SAN JUAN RD
200828-CFA00937	Emergent	8/28/2020	12:37:35 PM	12:41:42 PM	0:04:07	1:50:55 PM	55 DEL MESA CARMEL
200828-CFA00938	Emergent	8/28/2020	5:51:58 PM	5:57:09 PM	0:05:11	6:53:52 PM	26245 CARMEL RANCHO BLVD
200830-CFA00947	Emergent	8/30/2020	8:36:54 PM	8:41:25 PM	0:04:31	8:44:05 PM	S CARMEL HILLS DR / VIA CA
Subtotal		23	Average Response Time		0:05:03		CYPRESS FIRE

PEBBLE BEACH

INCIDENT							
200801-CFA00841	Emergent	8/1/2020	2:22:09 PM	2:28:52 PM	0:06:43	3:42:48 PM	SEVENTEEN MILE DR / BIRD F
200808-CFA00863	Emergent	8/8/2020	11:16:40 AM	11:21:55 AM	0:05:15	11:56:00 AM	CRESPI LN / SEVENTEEN MILE
200809-CFA00867	Emergent	8/9/2020	1:22:38 PM	1:32:51 PM	0:10:13	2:25:00 PM	2881 SEVENTEEN MILE DR
200812-CFA00877	Emergent	8/12/2020	1:40:52 PM	1:51:12 PM	0:10:20	3:03:47 PM	3150 SEVENTEEN MILE DR
200816-CFA00895	Emergent	8/16/2020	5:33:52 PM	5:42:06 PM	0:08:14	5:59:28 PM	VISCAINO RD / CORTEZ RD
200817-CFA00901	Emergent	8/17/2020	3:00:28 PM	3:03:45 PM	0:03:17	4:10:18 PM	SEVENTEEN MILE DR / CARME
200818-CFA00908	Emergent	8/18/2020	10:37:13 PM	10:51:24 PM	0:14:11	11:04:00 PM	26 OCEAN PINES LN
200819-CFA00911	Emergent	8/19/2020	8:59:59 PM	9:09:15 PM	0:09:16	9:18:00 PM	3128 SPRUANCE RD
200825-CFA00926	Emergent	8/25/2020	2:54:49 PM	3:02:09 PM	0:07:20	3:23:27 PM	3304 SEVENTEEN MILE DR
200827-CFA00932	Emergent	8/27/2020	3:43:40 PM	3:52:57 PM	0:09:17	4:49:03 PM	SEVENTEEN MILE DR / SIGNA
200830-CFA00945	Emergent	8/30/2020	10:27:00 AM	10:34:53 AM	0:07:53	11:17:11 AM	3258 ONDULADO RD
Subtotal		11	Average Response Time		0:08:22		PEBBLE BEACH

MID COAST

INCIDENT							
200703-CFA00721	Emergent	7/3/2020	11:43:50 AM	12:04:00 PM	0:20:10	2:04:47 PM	35600 HWY 1
200726-CFA00809	Emergent	7/26/2020	7:39:03 AM	7:52:02 AM	0:12:59	7:56:13 AM	HWY 1 / SOBERANES CREEK
Subtotal	2		Average Response Time		0:16:35	MID COAST	

PACIFIC GROVE

INCIDENT							
200727-CFA00818	Emergent	7/27/2020	1:39:30 PM	1:51:57 PM	0:12:27	2:50:00 PM	1011 DEL MONTE BLVD
200730-CFA00832	Emergent	7/30/2020	10:23:43 AM	10:30:37 AM	0:06:54	11:20:37 AM	511 CHESTNUT ST
Subtotal	2		Average Response Time		0:09:40	PACIFIC GROVE	

SEASIDE

INCIDENT							
200815-CFA00892	Emergent	8/15/2020	9:57:01 PM	10:08:30 PM	0:11:29	10:38:00 PM	1055 ROUSCH AVE
200817-CFA00903	Emergent	8/17/2020	5:32:19 PM	5:42:04 PM	0:09:45	6:31:11 PM	1287 PLAYA AVE
200818-CFA00906	Emergent	8/18/2020	6:02:40 AM	6:10:52 AM	0:08:12	6:51:21 AM	1349 CHESTNUT ST
200826-CFA00927	Emergent	8/26/2020	2:59:16 PM	3:04:00 PM	0:04:44	3:17:01 PM	905 KIMBALL AVE
Subtotal	4		Average Response Time		0:08:33	SEASIDE	

MARINA

INCIDENT							
200723-CFA00801	Emergent	7/23/2020	10:52:23 AM	11:03:17 AM	0:10:54	12:09:27 PM	3290 DUNES DR
200729-CFA00829	Non-Emergent	7/29/2020	5:47:36 PM	6:00:16 PM	0:12:40	7:00:00 PM	2976 BAYONET CT
Subtotal	2		Average Response Time		0:11:47	MARINA	

MONTEREY

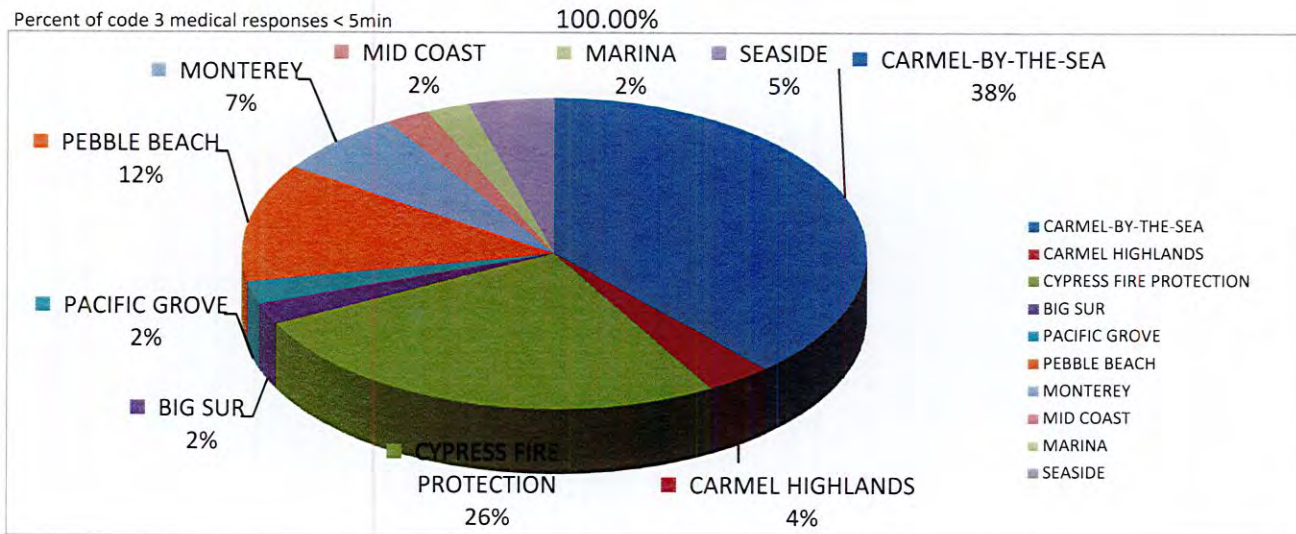
INCIDENT							
200801-CFA00843	Emergent	8/1/2020	8:54:02 PM	9:02:51 PM	0:08:49	10:00:00 PM	300 GLENWOOD CIR
200819-CFA00909	Emergent	8/19/2020	1:39:18 PM	1:49:54 PM	0:10:36	2:39:41 PM	65 LOGAN LN
200820-CFA00913	Emergent	8/20/2020	8:23:17 AM	8:28:15 AM	0:04:58	9:03:00 AM	200 GLENWOOD CIR
200824-CFA00922	Emergent	8/24/2020	7:09:04 PM	7:15:44 PM	0:06:40	7:48:58 PM	1300 MUNRAS AVE
200827-CFA00935	Emergent	8/27/2020	6:31:49 PM	6:36:18 PM	0:04:29	7:00:58 PM	2020 DEL MONTE AVE
200831-CFA00949	Emergent	8/31/2020	3:23:12 PM	3:28:14 PM	0:05:02	4:40:55 PM	574 CORTES ST
Subtotal	6		Average Response Time		0:06:46	MONTEREY	

TOTAL ALL CALLS	89		TOTAL AVERAGE RESPONSE TIME		0:06:49		
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CITY OF CARMEL - FIRE AMBULANCE DEPARTMENT
AUGUST 2020

Response Summary Report by District Type

<u>District Response</u>	<u>Number</u>	<u>Average Response Time</u>
CARMEL-BY-THE-SEA	34	0:03:02
CARMEL HIGHLANDS	3	0:08:33
CYPRESS FIRE PROTECTION	23	0:05:03
BIG SUR	2	0:39:33
PACIFIC GROVE	2	0:09:40
PEBBLE BEACH	11	0:08:22
MONTEREY	6	0:06:46
MID COAST	2	0:16:35
MARINA	2	0:11:47
SEASIDE	4	0:08:33
Total Responses	89	0:06:49





RESPONSE SUMMARY REPORT BY INCIDENT TYPE
27060 CARMEL-BY-THE-SEA
Alarm Date From: 8/1/2020 To: 8/31/2020



Incident	Alarm Date	Incident Number	Response Time	Combined Address	Cross Street	Priority
100 Series (Fires)						
Outside rubbish, trash or waste fire	8/14/2020 11:49 AM	200814-MNT04761	0:04:13	DOLORES ST	7TH AVE	3
1			0:04:13			
300-321 Series (EMS)						
EMS call, excluding vehicle accident with injury	8/2/2020 5:14 PM	200802-MNT04528	0:02:42	MISSION ST	3RD AVE	3
EMS call, excluding vehicle accident with injury	8/4/2020 2:24 PM	200804-MNT04558	0:01:57	JUNIPERO AVE	4TH AVE	3
EMS call, excluding vehicle accident with injury	8/5/2020 4:54 PM	200805-MNT04579	0:01:39	5TH AVE	SANTA FE ST	3
EMS call, excluding vehicle accident with injury	8/7/2020 11:13 AM	200807-MNT04603	0:02:19	CARPENTER ST	4TH AVE	3
EMS call, excluding vehicle accident with injury	8/9/2020 5:04 PM	200809-MNT04657	0:02:45	LINCOLN ST	8TH AVE	3
EMS call, excluding vehicle accident with injury	8/10/2020 7:40 AM	200810-MNT04670	0:04:11	SAN ANTONIO AVE	13TH AVE	3
EMS call, excluding vehicle accident with injury	8/10/2020 12:22 PM	200810-MNT04674	0:00:09	MISSION ST	4TH AVE	3
EMS call, excluding vehicle accident with injury	8/12/2020 3:38 PM	200812-MNT04719	0:00:21	6TH AVE	MISSION ST	3
EMS call, excluding vehicle accident with injury	8/13/2020 9:16 PM	200813-MNT04749	0:00:04	6TH AVE	MISSION ST	3
EMS call, excluding vehicle accident with injury	8/15/2020 5:53 PM	200815-MNT04792	0:04:59	DOLORES ST	13TH AVE	3
EMS call, excluding vehicle accident with injury	8/16/2020 9:53 AM	200816-MNT04839	0:02:11	LINCOLN ST	6TH AVE	3
EMS call, excluding vehicle accident with injury	8/16/2020 4:55 PM	200816-MNT04850	0:04:30	OCEAN AVE	CASANOVA ST	3
EMS call, excluding vehicle accident with injury	8/16/2020 8:46 PM	200816-MNT04857	0:02:26	OCEAN AVE	LINCOLN ST	3
EMS call, excluding vehicle accident with injury	8/17/2020 9:21 AM	200817-MNT04869	0:02:19	MISSION ST	10TH AVE	3
EMS call, excluding vehicle accident with injury	8/21/2020 11:52 AM	200821-MNT04974	0:02:56	13TH AVE	SAN CARLOS ST	3
EMS call, excluding vehicle accident with injury	8/21/2020 12:15 PM	200821-MNT04975	0:02:15	DOLORES ST	OCEAN AVE	3
Medical assist, assist EMS crew	8/29/2020 2:06 PM	200829-MNT05136	0:03:32	DOLORES ST	13TH AVE	3
17			0:02:26			
322-399 Series (Rescues)						
Rescue or EMS standby	8/1/2020 12:36 PM	200801-MNT04507	0:03:45	8TH AVE	SCENIC RD	3
Motor vehicle accident with injuries	8/9/2020 7:44 AM	200809-MNT04642	0:02:17	6TH AVE	MISSION ST	3
Removal of victim(s) from stalled elevator	8/15/2020 6:39 PM	200815-MNT04800	0:02:52	JUNIPERO AVE	6TH AVE	3
Rescue or EMS standby	8/28/2020 7:56 PM	200828-MNT05128	0:02:24	DOLORES ST	5TH AVE	3
Motor vehicle accident with no injuries.	8/30/2020 7:54 PM	200830-MNT05166	0:03:33	2ND AVE	SANTA FE ST	3
5			0:02:58			
400 Series (Hazardous Material)						
Electrical wiring/equipment problem, other	8/4/2020 2:54 PM	200804-MNT04560	0:02:43	CASANOVA ST	7TH AVE	2
1			0:02:43			

Incident	Alarm Date	Incident Number	Response Time	Combined Address	Cross Street	Priority
500 & 600 Series (Service Calls)						
Public service	8/3/2020 11:35 AM	200803-MNT04537	0:04:12	JUNIPERO AVE	11TH AVE	2
Assist invalid	8/8/2020 8:07 PM	200808-MNT04631	0:04:35	GUADALUPE ST	3RD AVE	2
Water evacuation	8/10/2020 7:08 AM	200810-MNT04667	0:03:55	SAN ANTONIO AVE	OCEAN AVE	3
Water problem, other	8/13/2020 3:04 PM	200813-MNT04740	0:05:34	N CARMELO ST	2ND AVE	2
No incident found on arrival at dispatch address	8/15/2020 1:25 PM	200815-MNT04786	0:04:34	OCEAN AVE	JUNIPERO AVE	2
Assist invalid	8/16/2020 8:52 PM	200816-MNT04859	0:09:38	LINCOLN ST	7TH AVE	2
No incident found on arrival at dispatch address	8/17/2020 11:31 AM	200817-MNT04875	0:03:29	OCEAN AVE	SCENIC RD	3
No incident found on arrival at dispatch address	8/17/2020 8:41 PM	200817-MNT04892	0:03:15	CASANOVA ST	9TH AVE	3
No incident found on arrival at dispatch address	8/22/2020 1:31 PM	200822-MNT04998	0:01:53	7TH AVE	SAN CARLOS ST	3
No incident found on arrival at dispatch address	8/27/2020 12:32 PM	200827-MNT05097	0:03:22	JUNIPERO AVE	10TH AVE	3
Public service	8/29/2020 12:41 PM	200829-MNT05134	0:02:29	LINCOLN ST	7TH AVE	3
Public service	8/29/2020 2:14 PM	200829-MNT05137	0:03:30	4TH AVE	MONTE VERDE ST	3
Assist invalid	8/30/2020 8:31 AM	200830-MNT05154	0:03:25	7TH AVE	LINCOLN ST	2

13

0:03:51

700 Series (False Alarms)

Smoke detector activation due to malfunction	8/4/2020 7:52 PM	200804-MNT04565	0:03:32	3RD AVE	LINCOLN ST	2
Smoke detector activation due to malfunction	8/5/2020 11:59 PM	200805-MNT04583	0:03:32	7TH AVE	JUNIPERO AVE	3
Carbon monoxide detector activation, no CO	8/13/2020 5:13 PM	200813-MNT04744	0:04:35	SCENIC RD	OCEAN AVE	2
Alarm system activation, no fire - unintentional	8/15/2020 10:28 AM	200815-MNT04784	0:04:50	CAMINO REAL ST	11TH AVE	3
Alarm system activation, no fire - unintentional	8/16/2020 12:33 PM	200816-MNT04843	0:03:56	SAN CARLOS ST	10TH AVE	2
Detector activation, no fire - unintentional	8/17/2020 5:57 PM	200817-MNT04886	0:02:27	SAN CARLOS ST	7TH AVE	3
Smoke detector activation, no fire - unintentional	8/18/2020 5:59 PM	200818-MNT04918	0:03:21	LINCOLN ST	10TH AVE	3
Alarm system sounded due to malfunction	8/21/2020 11:54 PM	200821-MNT04986	0:04:14	DOLORES ST	8TH AVE	3
Alarm system sounded due to malfunction	8/25/2020 9:16 AM	200825-MNT05053	0:03:26	CASANOVA ST	9TH AVE	3
Alarm system activation, no fire - unintentional	8/28/2020 8:17 AM	200828-MNT05117	0:03:35	SAN CARLOS ST	SANTA LUCIA AVE	3
Alarm system sounded due to malfunction	8/28/2020 6:12 PM	200828-MNT05126	0:03:59	LINCOLN ST	12TH AVE	3
Smoke detector activation, no fire - unintentional	8/30/2020 5:15 AM	200830-MNT05152	0:01:22	LINCOLN ST	9TH AVE	3

12

0:03:34

Over 5 Minute Response Times Cause of Delay: Code 3 Responses

none

Code 2 Calls	10
Code 3 Calls	39

Total # of Incidents	49
% Under 5 Minute Response Time	100.0%



CARMEL-BY-THE-SEA AUGUST 2020 Response Summary Report by Incident Type

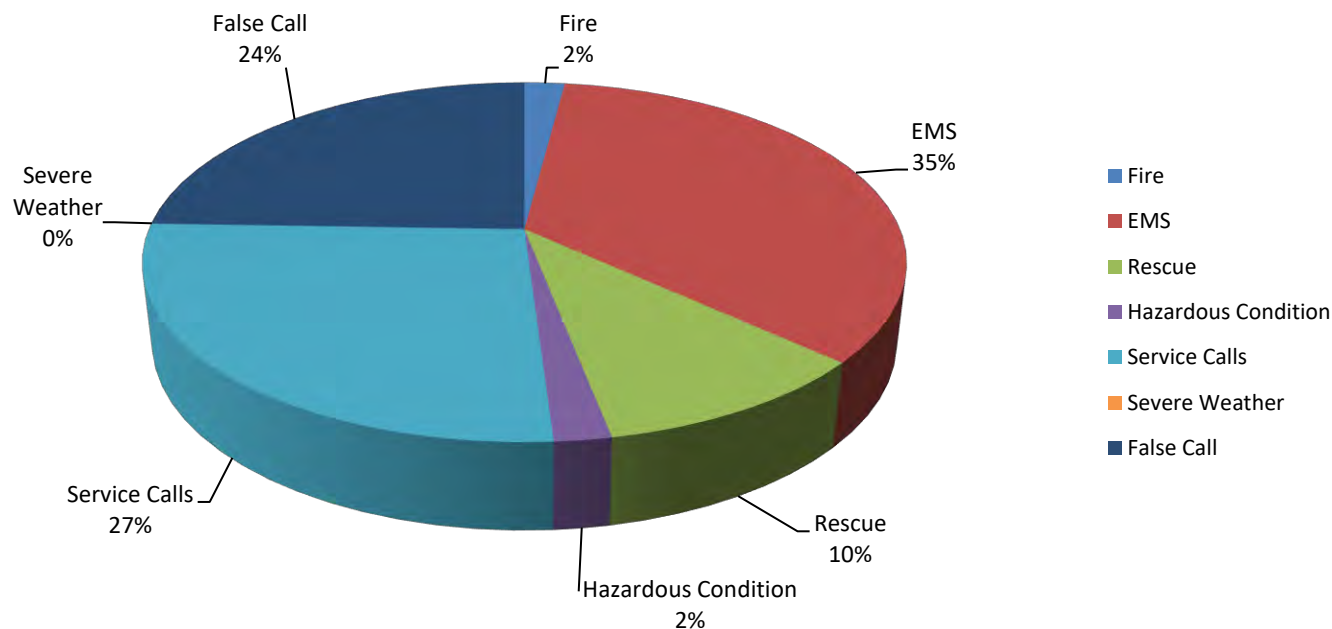


Type of Call	Number	Average Response Time
Fire	1	4:13
EMS	17	2:26
Rescue	5	2:58
Hazardous Condition	1	2:43
Service Calls	13	3:51
Severe Weather	0	0:00
False Call	12	3:34

Total Responses

49

3:16



Total Code 3 Calls:

39

Response Times for Code 3

Calls ≤ 5 minutes:

100.0%

39



CITY OF CARMEL-BY-THE-SEA

Monthly Report

August 2020

City Clerk's Office

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Britt Avrit, City Clerk
SUBMITTED ON:	September 14, 2020
APPROVED BY:	Chip Rerig, City Administrator

In the month of August, the City handled 33 requests for public records.

	This Month	Calendar YTD
City Clerk's Office	14	90
Police Department	19	115
TOTAL REQUESTS/RESPONSES	33	205

August 2020 PRA

request number	Date Requested	10-day due date	records requested	requestor	date completed	notes
2020-076	8/3/2020	8/13/2020	Electronic copies of Carmel-by-the-Sea police citations written to individuals and businesses for violations of Monterey County's Shelter-In-Place Orders, including original, superseded and updated Orders, and police reports, forwarded to the Monterey County District Attorney's Office for potential prosecution between March 18, 2020 and the present	Paterson	8/25/2020	
2020-077	8/3/2020	8/13/2020	An Excel spreadsheet containing the following information for every employee, administrator, elected official, and volunteer currently "working" in your organization; First Name, Last Name, Position, Email Address	Smith and Dailey	8/24/2020	
2020-078	8/3/2020	8/13/2020	review any and all files you have regarding the above listed APN including, but not limited to, your file LD 20-127. The property is located at 9 th 2 SW Lincoln and is owned by Matlock. I understand from your website that the project is under review (although it may have been approved)	Kristie Campbell/ Fenton & Keller	8/28/2020	8/21/2020 sent email to set appt to review remaining paper records; 8/28 recd email - do
2020-080	8/6/2020	8/17/2020	Electronic copies of correspondence between Forest Theater Guild, Pacific Repertory Theater and the City regarding Sunset Cultural Center, Inc. (SCC) management of the Forest Theater, including, but not limited to, correspondence from the Forest Theater Guild to the City requesting the City's intervention in resolving a conflict between Forest Theater Guild and SCC involving performances and dates, between Autumn 2019 and the present. 2) Electronic copies of correspondence between the SCC, including but not limited to, SCC Executive Director Christine Sandin, and the City, regarding SCC's desire for a separate future from the Forest Theater, between the time SCC informed the City and the present 3) Electronic copies of correspondence within the City regarding the City's efforts to resolve the conflict over performances and dates between the Forest Theater Guild and SCC between Autumn 2019 and the present.	Paterson		

August 2020 PRA

request number	Date Requested	10-day due date	records requested	requestor	date completed	notes
2020-081	8/10/2020	8/20/2020	Public records demonstrating the City's good faith effort to remedy "settled" foundation, Public records demonstrating the City's good faith effort to follow the Secretary of Interior Standards with regard to the gutters, including, but not limited to, installed "modern gutters." Public records demonstrating the City's good faith effort to remedy "degradation" and develop a "formal maintenance schedule" for this National Register of Historic Places resource.	Paterson	8/19/2020	related to Flanders Curatorship
2020-082	8/10/2020	8/20/2020	Electronic copies of correspondence between members of the public and the City regarding the aforementioned agenda item.	Paterson	8/18/2020	Urgency Ord 2020-004
2020-083	8/10/2020	8/20/2020	Electronic copy of the City of Carmel-by-the-Sea's Urban Tree Canopy (UTC) Assessment including Tree Canopy Cover (59%), Impervious Surfaces and Pervious Surfaces (bare soils and low-lying vegetation) percentages and Tree Canopy by Park information and any Historic Tree Canopy Cover information.	Paterson	8/19/2020	
2020-084	8/10/2020	8/20/2020	Electronic copies of Public Records Act requests and City's responses to PRA requests CITY CLERK'S OFFICE PRA LOG JUNE 2020 REQUEST NUMBERS PRA 2020-054 and PRA 2020-056 through PRA 2020-061	Paterson	8/24/2020	
2020-085	8/14/2020	8/24/2020	list of current business license holders	Roger Miller	8/24/2020	
2020-086	8/19/2020	8/31/2020	copies of each encroachment permit application and their corresponding approvals for the last three months	Parker Logan		
2020-087	8/27/2020	9/8/2020	all permits, applications, and any correspondence for all ADU and JADU(Accessory dwelling units and Junior accessory dwelling units) in the city of Carmel by the sea dating back to January 1, 2019 to present day (August 27, 2020)	Parker Logan	cancelled 8/31/2020	
2020-088	8/27/2020	9/8/2020	Electronic copies of Public Records Act requests and City's responses to PRA requests CITY CLERK'S OFFICE PRA LOG JULY 2020 REQUEST NUMBERS PRA 2020-068, 2020-070, 2020-072, 2020-073, 2020-075	Paterson		

August 2020 PRA

request number	Date Requested	10-day due date	records requested	requestor	date completed	notes
2020-089	8/31/2020	9/10/2020	Any all documents, including, but not limited to, notes and correspondence by members of Carmel-by-the-Sea City Council taken during or after City Council meetings, reflecting the reasons for “changes to the City organization and potentially its structure” that the City undertook in September 2014 that resulted in Susan Paul’s separation of employment in or around that period of time; Any and all of the following documents related to personnel actions undertaken by Susan Paul during her employment with the City of Carmel-by-the-Sea, including, Documents reflecting correspondence from members of the public, complaints, lawsuits, and grievances filed by former employees and/or labor organizations because of personnel actions taken by the City under the direction of Ms. Paul; Documents reflecting the terms of any settlement agreements reached by the City concerning the above-mentioned complaints, lawsuits and grievances. Any and all documents reflecting the terms of any settlements the City has entered into with Steve McInchak, former IT Manager of Carmel-by-the-Sea, and/or his estate	Daniel Rojas		
2020-090	8/31/2020	9/10/2020	list of issued residential building permits for the city since May of 2019, Please include address, valuation, scope of work and contractor name, (phone number if available.)	Doug Pannabecker		

Request No.	Request Date & Received By	10-Day Due Date	14-Day Ext. Date	Date Completed by PSO	Requestor	Attachment 4 Phone	Info Requested	Status	Date & PSO Mailed
2020-0001	08-03 MJR			08-03 MJR	Krause Heidi Lynn	714-305-3608	CG2000351	Completed	08-03 MJR Mailed
2020-0002	08-03 MW	8/13/2020			METROPOLITAN REPORTING	800-245-6686	CC2000381	Completed	08/04 MW - MAILED
2020-0003	6-Aug	16-Aug		8/7 DA	Metropolitan Reporting Bureau		CA20000371	completed	mailed by DA
2020-0004	8/6/2020	8/16/2020		8/7 DA	Lexis Nexis		CA20000303	completed	mailed by DA
2020-0005	8/6/2020	8/16/2020		8/7 DA	Lexis Nexis		CA2000364	completed	mailed by DA
2020-0006	8/6 DA	8/16/2020		8/7 DA	Lexis Nexis		CA2000355	completed	mailed by DA
2020-0007	8/9 MJR			8/10 mjr	Paul Mannel		CG2000382	Completed	released by MJR
2020-0008	8/10 MJR			8/10 MJR	Samantha Hisey		CA2000376	Completed	released MJR
2020-0009	8/12 DA	8/22/2020		8/14 DA	Lexis Nexis		Accident Report	No Record	mailed by DA
2020-0010	8/10 Mo	8/20/2020		15-Aug	Sidney Matlock		CG2000384	redacted report	mailed by DA
2020-0011	8/14/2020	8/24/2020		8/15 DA	Metropolitan Reporting		CG2000379	Completed	mailed by DA
2020-0012	8/17/2020				Binnaz Onur		CC1400260	Completed	released at counter
2020-0013	8/7/2020	8/17/2020		8/19 DA	Steve Saunders	8313736422	82-0388	Denied	No report found
2020-0014	8/18/2020	8/28/2020			Melanie Woodrow		CA2000402	completed	report emailed
2020-0015	8/20/2020	8/30/2020		9/11 DA	Justin Burke/Carmel Mission		CG200400	Denied	letter mailed, case under investigation
2020-0016	8/14/2020	8/24/2020		8/15/20 DA	Anita Segal	818-481-9619	CG2000378	completed	report mailed
2020-0017	8/24/2020			8/29 DA	Sidney Matlock	804-517-0848	CG2000384-suppl 2 & 3 only	completed	supplement mailed
2020-0018	8/24/2020	9/4/2020		9/11/20 DA	Dennis Berard	8312363611	CG1900541	completed	redacted report picked up
2020-0019	8/26/2020	9/16/2020		8/26 DA	Metropolitan Reporting		CA2000380	completed	mailed by DA



CITY OF CARMEL-BY-THE-SEA

Monthly Report

Public Works Department Report – August 2020

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Robert M. Harary, P.E., Director of Public Works
SUBMITTED ON:	September 8, 2020
APPROVED BY:	Chip Rerig, City Administrator

Planning Commission Meeting of August 12, 2020

- City Forester presented the State of Carmel Forest and Vision for the Future
- Environmental Compliance Manager presented the State of the North Dunes Habitat Restoration Project

Forest and Beach Commission Special Meeting of August 20, 2020

- Approved removal of 17 eucalyptus trees at San Antonio and Fourth Avenues (Overett) with conditions including: provide a bird survey, remove stumps, plant 2 additional upper canopy trees, submit status reports for 10 years, and make \$21,250 contribution for the North Dunes Habitat Restoration Project.
- Approved lifting Stop Work Order upon removing 2 damaged trees, posting a \$10,000 bond for 4 trees for 10 years, resubmitting landscape plan, paying \$6,400 for the removed trees, and reimbursing City for arborist report on Dolores 7 SW of Thirteenth Avenue (Micovic)
- Approved lifting Stop Work Order upon levying a \$50,000 fine for damage to the urban forest, paying \$6,200 for removed trees, posting bond for the oak trees for 5 years, removing the cypress tree on neighbor's (Massoudi) property at the applicant's expense, resubmitting landscape plan with enhancements in the public right-of-way, and reimbursing City for arborist report on Guadalupe 4 NE of Third Avenue (Stepanek). This item is scheduled for Appeal to City Council in October.
- Deferred taking action on a coast live oak removal permit due to the tree growing against a house on Carmelo Street 4 SW of Second Avenue until additional information is provided by applicant (Melani).

Public Works Administration

- Wished Senior Facility Maintenance Worker Leo Hernandez good luck with his 5-month National Guard training in Missouri. He will be back in January.
- The Transportation Agency of Monterey County (TAMC) approved a funding agreement with the City for \$40,311 in RSTIP grant. Funds will be used for installation of two, dual electric vehicle chargers, traffic safety paint and supplies, and sidewalk repairs along Mission Street.
- Developed a list of 28 potential transportation-related projects, valued at \$32 million, to be included into TAMC's 20-year Regional Transportation Plan.
- Led by Councilwoman Reimers, the sponsorship program for mutt mitt dispensers raised over \$9,000.

- Began weekly Zoom meetings with volunteers in the Carmel Cares organization. These volunteers purchased new landscaping equipment for the forestry crews and are working hard on cleaning up the Scenic Pathway, among many other initiatives.
- All Public Works staff was trained on First Aid and CPR by the Monterey Fire Department. In addition, an Automated External Defibrillator (AED) was purchased.

Environmental Programs

- On August 20th, the Climate Action Committee met and focused on outreach to community groups and regional organizations. Also, Monterey County's Sustainability Program Manager presented an update on the County's Climate Action Plan process.
- Issued letter of support to Monterey County for their Climate Action Plan grant application.
- In early August, the City received a Notice of Violation from the California Water Quality Control Board regarding construction inventory tracking associated with stormwater controls. By the end of August, our paperwork was submitted, and the Board released the Notice.
- Drafted the City's first Pesticide Policy and distributed for comments. Policy will be presented to Council for adoption at an upcoming meeting.
- Reviewed final draft of a regional Trash Compliance Plan prepared for the Monterey Regional Stormwater Management Program.
- Listed 16 current, all-volunteer organizations that are currently helping the City and the Public Works Department maintain and upgrade the Village. List includes City staff assigned to each.

Facility Maintenance

- Obtained quotes from electrical contracts to install two, dual ChargePoint electric vehicle chargers at the Sunset Center north parking lot, northwest corner.
- Met with Monterey Bay Community Power to refine the scope of the Park Branch Library backup generator project which is eligible for a low, 1.87% interest loan.
- Replaced the broken halogen up-light for the flagpole at the Harrison Memorial Library with a new, energy-efficient LED light.
- Caught a toilet paper thief red handed at Devendorf Park and notified the Police.

Project Management

- New gutters and downspouts were installed along the north and east sides of the Scout House. The Roof Replacement Project is now complete.

Street Maintenance

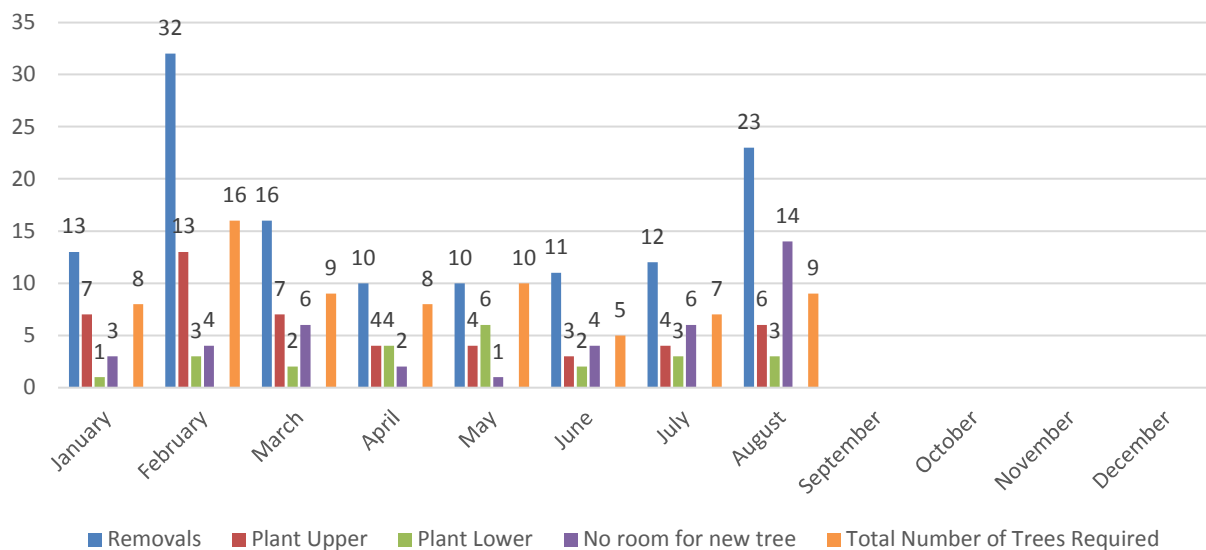
- Using a generous donation of \$5,000 for materials from the Friends of Mission Trail Nature Preserve, Public Works repaired a chronic erosion problem by creating a rock-lined swale across the Willow Trail to allow runoff to dissipate into a flat willow bog on the other side of the trail, instead of eroding the closer edge of the trail.
- Continued removing piles of weeds, dead wood, and debris from the MTNP.
- Structurally-reinforced a retaining wall along the San Antonio Avenue pathway, north of Fourth.
- Made asphalt pavement repairs at various locations around the City.
- Backfilled the eroded and exposed beach stairs base and adjacent rocks at the bottom of the Eighth Avenue beach stairs.
- Continued to support the Police Department with traffic control, vehicle barriers, and signs for weekends which were subjected to hot weather and nearby forest fires.

Forestry, Parks and Beach (Forester's Report)

- Council approved new fees for tree pruning and removal permits, and tree-related appeals to the Forest and Beach Commission and City Council, effective September 1st. Fees will no longer be charged to citizens who wish to prune or remove dead, City-owned trees under the City Forester's direction and at their own expense.
- Coordinated with Friends of Carmel Forest to plan a pilot, low-maintenance, attractive landscaped parklet at Monte Verde Street and Seventh Avenue. Installation coming soon.
- Staff has been working on wildfire mitigation work on Second Avenue between Casanova Street and Lopez Avenue, and Acacia removals in the Mission Trail Nature Preserve.
- Irrigation along the Scenic Pathway is being repaired from Eighth Avenue moving south.
- Working with Community Planning on a new parking barricade pilot project using a fire pit cauldron filled with landscaping.
- New California oak worm sightings at Lincoln Street and Ninth Avenue.
- Notable tree failures - No notable failures addressed in August.
- 2,536 trees have been inventoried as of September 1, 2020. Staff is inventorying trees as work and inspections are performed.

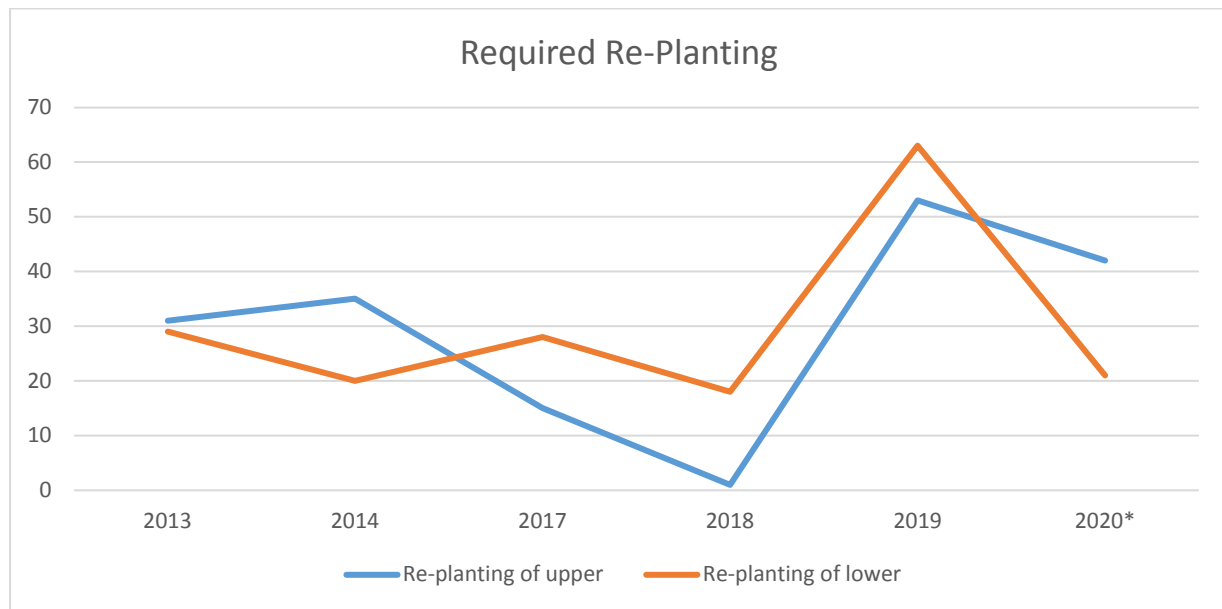
Private and Development Activities

Removal Permits and Required Replanting 2020



Permitted Removals and Required Planting -2020					
	Removals	Plant Upper	Plant Lower	No Room for new Trees	Total Number of Trees Required
January	13	7	1	3	8
February	32	13	3	4	16
March	16	7	2	6	9
April	10	4	4	2	8
May	10	4	6	1	10
June	11	3	2	4	5
July	12	4	3	6	7
August	23	6	3	14	9

Historic Permitted Removals and Required Planting							
	Removal Permits	Removal Upper	Removal Lower	Re-planting Required	Re-planting Upper	Re-planting Lower	Re-planting %
2012	96			20			20.83%
2013	123	60	63	59	31	29	47.97%
2014	145	64	81	49	35	20	33.79%
2016	90			37			41.11%
2017	119	50	69	43	15	28	36.13%
2018	77	37	60	20	1	18	25.97%
2019	170	107	63	116	53	63	68.24%
2020*	139	48	30	81	48	24	58.27%
	*year to date						

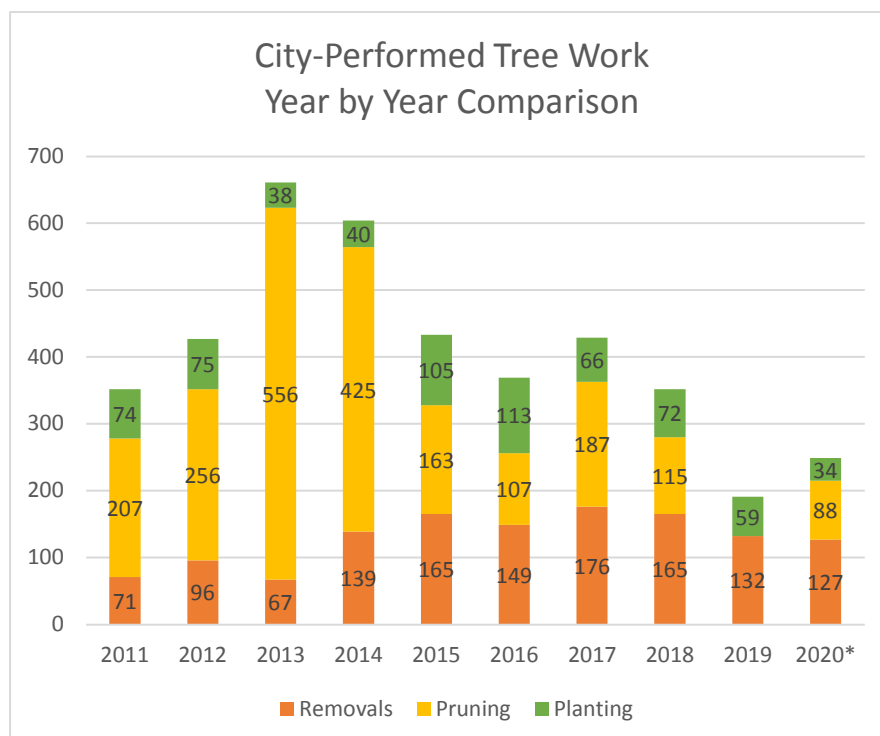
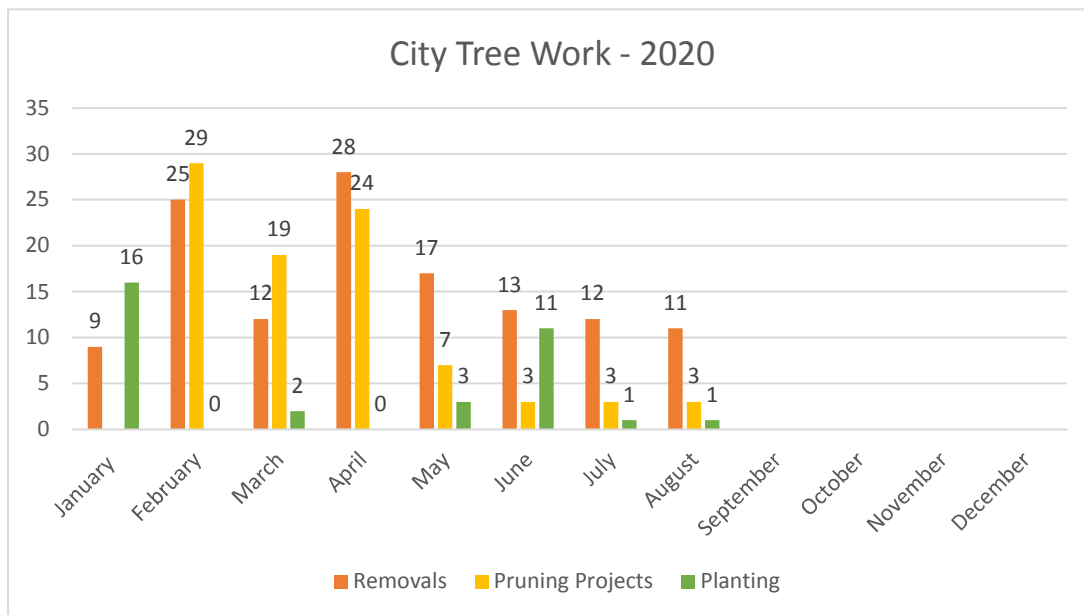


Stop Work Orders Issued:

- Torres Street 5 Northeast of Fifth Avenue for violations of Municipal Code 17.48.110.
- Guadalupe 4 Northeast of Third Avenue for violations of Municipal Code 17.48.110.
- Camino Real Northeast of Ocean Avenue for violations of Municipal Code 17.48.110.
- Unpermitted tree work Scenic Road and Eighth Avenue.

City Forestry, Parks, and Beach Activities

City Tasks August 2020	
Work Type	Count
Cavity care	1
Failure - limb	1
Inspections	60
Trees planted	1
Pruning	3
Removals	11





CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
CONSENT AGENDA**

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Robin Scattini, Finance Manager

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: August 2020 Check Register Summary

RECOMMENDATION:

Approve the check register for August 2020.

BACKGROUND/SUMMARY:

The check register is produced from the City's financial system. The report groups the checks by the respective department or function. The check register includes the check number, the name of the vendor, a description of the purchase, the check issue date and the amount of the check. Per the California Supreme Court's decision in the case of Los Angeles County Board of Supervisors v. Superior Court (Dec. 29, 2016) (2016 WL 7473802), the check register excludes the specific invoice payments for legal services incurred for pending and active investigations, pending and active litigation, as well as recently concluded matters. The Supreme Court has ruled that these specific invoices are protected under attorney-client privilege and need not be disclosed under the Public Records Act.

On the last page of the report, staff have included the contract balance for the respective vendors that were paid in August.

FISCAL IMPACT:

The check register summary for August 2020 totals \$489,603.

PRIOR CITY COUNCIL ACTION:

Council ratified the June 2020 and July 2020 check registers at its September 1 regular meeting.

ATTACHMENTS:

August 2020 check register

August 2020 Check Register

Check No.	Vendor/Employee	Transaction Description	Date	Amount
Department: 000 Marketing & Economic Development				
45609	Monterey County Convention & Visitors Bureau	TID Remittance May-June 2020	08/27/2020	21,809.70
45617	Visit Carmel	CHID remittance for May-June 2020	08/28/2020	70,070.29
Total for Department: 000 Marketing & Economic Development				91,879.99
Department: 110 City Council				
45524	Monterey Bay Air Resources District	FY 2020-21 Monterey County per capita fees	08/07/2020	1,856.03
45525	Monterey County Auditor-Controller	LAFCO Budget Allocation 2020-2021	08/07/2020	15,453.07
45572	Peninsula Messenger Service	Mail service: Sort and delivery	08/17/2020	7,298.00
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	537.00
45597	United Way	Financial support for 211 Monterey County 2020-21	08/20/2020	2,500.00
45615	Coastal TPA, Inc	Dental and vision reimbursement claims	08/28/2020	390.06
Total for Department: 110 City Council				28,034.16
Department: 111 City Administration				
45519	AT&T	Police Dept router and telecommunication services	08/07/2020	711.80
45520	Code Publishing Company	Updates to Muni code, paper and electronic	08/07/2020	625.50
45521	Corbin Willits System	MOM Software support	08/07/2020	720.79
45522	InterVision	Annual threat prevention subscription and support service	08/07/2020	10,560.00
45523	Minuteman Press	COVID safety cards	08/07/2020	648.95
45528	Wageworks, Inc	Healthcare monthly admin and compliance fee	08/07/2020	170.00
45560	Alhambra	Water service-City Hall	08/17/2020	57.74
45561	AT&T	Telephone service citywide	08/17/2020	3,494.27
45563	Carmel Pine Cone	Legal noticing	08/17/2020	686.75
45564	Chavan and Associates, LLC	Professional service: FY19-20 audit	08/17/2020	11,700.00
45565	City of Foster City	CALOPPS Annual fee 7/1/20 to 6/30/21	08/17/2020	3,570.00
45566	Comcast	CALNET NGEN Billing	08/17/2020	644.82
45567	FedEx	Shipping fees	08/17/2020	179.70
45568	Harrison Memorial Library	Reimburse for credit card usage for OnSip IT subscription /	08/17/2020	503.69
45569	Iron Mountain	Record storage	08/17/2020	222.77
45570	Office Depot, Inc.	Office supplies	08/17/2020	173.02
45573	Sloan Sakai Yeong & Wong	Professional services	08/17/2020	688.00
45574	Sprint	Usage: voice, messaging, data	08/17/2020	323.06
45576	T-Mobile	Monthly cell usage	08/17/2020	1,457.78
45578	US Bank	Training registration: C. Rerig, M. Gullo	08/17/2020	815.90
45579	Verizon Wireless	Usage: voice, messaging, data	08/17/2020	249.55
45580	Zoom Imaging Solutions, Inc.	Admin copier usage fees	08/17/2020	336.99

45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	1,619.26
45598	Wageworks, Inc	Healthcare monthly admin and compliance fee	08/20/2020	170.00
45601	Carmel Pine Cone	Legal noticing	08/27/2020	225.00
45604	Comcast	Business cable services-City Hall	08/27/2020	68.55
45605	Corbin Willits System	MOM Software support	08/27/2020	720.79
45607	Digital Deployment	Maintenance and security updates for website	08/27/2020	700.00
45610	Netkiller, Inc.	Annual G-Suite Enterprise for domain and support	08/27/2020	14,112.00
45613	Toshiba Financial Service	City Hall Copier Lease:Toshiba ESTUDIO 5506ACT	08/27/2020	373.06
45614	US Bank	Election materials, IT subscriptions, laptops	08/27/2020	3,322.61
45616	Sloan Sakai Yeong & Wong	Professional services	08/28/2020	237.00
Total for Department: 111 City Administration				60,089.35

Department: 115 Community Planning & Building

45532	American Planning Association	Membership dues: E. Kort	08/14/2020	434.00
45535	Carmel Pine Cone	Legal noticing	08/14/2020	146.25
45538	De Lage Landen Financial	Front copier lease	08/14/2020	222.23
45541	Granicus, Inc.	Host compliance for Code Enforcement program	08/14/2020	9,041.55
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	943.43
Total for Department: 115 Community Planning & Bu				10,787.46

Department: 116 Police

45495	Carmel Office Supply	UPS/Fed Ex Shipping Charges for PD	08/05/2020	447.25
45498	Monterey County Animal Servcies	3rd Quarter Animal Impounds	08/05/2020	160.00
45499	Monterey County Information Technology	Radio services Police Dept	08/05/2020	5,465.85
45500	Monterey County Sheriff-Coroner	Criminal Justice Admin fee/Jail Access fee	08/05/2020	1,238.37
45501	Monterey County Dept of Emergency Communicatio	911 Dispatch services	08/05/2020	47,302.15
45502	Sprint	GPS site	08/05/2020	100.00
45503	T2 Systems Canada Inc.	Digital Iris Svcs.	08/05/2020	125.00
45504	The Radar Shop	Radar certification	08/05/2020	296.00
45505	Transunion Risk & Alterna	Monthly Fee for Investigative Searches	08/05/2020	209.10
45506	US Bank	COVID sanitation spraying, supplies, training registration	08/05/2020	1,323.90
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	1,824.60
45615	Coastal TPA, Inc	Dental and vision reimbursement claims	08/28/2020	794.00
Total for Department: 116 Police				59,286.22

Department: 117 Fire

45496	City Of Monterey	Fire engine repairs	08/05/2020	11,404.10
45497	Mission Linen Service	Linen maintenance	08/05/2020	108.93
45499	Monterey County Information Technology	Radio services	08/05/2020	1,522.26

Total for Department: 117 Fire	13,035.29
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Department: 118 Ambulance

45493	Bauer Compressors	Air Gas sample test	08/05/2020	1,910.00
45494	Caltronics Business Systems, Inc.	Copier meter reading	08/05/2020	38.66
45507	Wittman Enterprises, LLC	Ambulance billing services	08/05/2020	2,450.97
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	172.75

Total for Department: 118 Ambulance	4,572.38
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Department: 119 Public Works

45529	Ailing House Pest Control	Pest control: citywide all buildings and parks	08/14/2020	1,177.00
45530	American Lock & Key	Key blanks	08/14/2020	134.37
45531	American Messaging	Messaging service for panic alarms	08/14/2020	4.00
45533	AR Gutters & Sheet Metal Inc.	Materials for Flanders roof repair	08/14/2020	65.00
45534	Caltronics Business Systems, Inc.	Public Works Copier lease and usage	08/14/2020	84.02
45537	Cintas Corporation	Uniform Service for Public Works Division	08/14/2020	349.81
45538	De Lage Landen Financial	Copier lease and usage	08/14/2020	205.39
45539	GCS Environmental Equipment Services	Set of curtains and a gutter broom motor for sweeper	08/14/2020	933.80
45540	Golden State Portables	Forest Theater restrooms	08/14/2020	380.88
45542	Green Rubber Kennedy AG	Pressure washer hose	08/14/2020	103.79
45545	M & S Building Supply	Supplies for projects in the City	08/14/2020	39.31
45547	Marina Backflow Company	Test on backflow devices - 11 locations	08/14/2020	660.00
45549	MJ Murphy Lumber and Hardware	Supplies for projects in the City	08/14/2020	193.75
45550	Monterey Auto Supply Inc/Napa Auto Parts	Vehicle supplies	08/14/2020	472.66
45551	National Stock Sign Company	2 Cases of No Parking Signs	08/14/2020	518.94
45552	Overhead Door Co of Salinas	Remote control replacements	08/14/2020	554.95
45553	Pureserve Building Service	Janitorial services citywide - July & August	08/14/2020	31,391.50
45554	Scarborough Lumber & Building	Supplies for projects in the City	08/14/2020	75.64
45555	Tree Stuff Lockbox No 639707	Rigging equipment	08/14/2020	1,092.77
45556	Uline Inc.	First Aid kits for City vehicles	08/14/2020	883.09
45557	US Bank	Facilities supplies	08/14/2020	105.08
45558	USA North 811	2020 membership fee	08/14/2020	1,574.99
45577	Town and Country Gardening	Landscape maintenance citywide	08/17/2020	4,104.00
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	566.35
45593	Granite Rock Company	Supplies for projects in the City	08/20/2020	696.42
45594	Greenwaste Recovery Inc	Food waste cart service	08/20/2020	194.86
45595	Kelly-Moore Paint Company Inc	Paint supplies	08/20/2020	244.81
45596	Scarborough Lumber & Building	Supplies for projects in the City	08/20/2020	10.45
45599	American Lock & Key	New door lock at PD	08/27/2020	196.90
45600	American Messaging	Messaging service for panic alarms	08/27/2020	2.50
45602	Carmel Towing & Garage	July fuel	08/27/2020	1,484.36
45603	Cintas Corporation	Uniform Service for Public Works Division	08/27/2020	262.07
45608	Monterey Auto Supply Inc/Napa Auto Parts	Vehicle supplies	08/27/2020	164.63

45612	Scarborough Lumber & Building	Supplies for projects in the City	08/27/2020	21.95
45614	US Bank	Electric message board rental, supplies	08/27/2020	1,679.42
45615	Coastal TPA, Inc	Dental and vision reimbursement claims	08/28/2020	236.00
Total for Department: 119 Public Works				50,865.46

Department: 120 Library

45527	Pacific Grove Self Storage	Storage unit for city art	08/07/2020	280.00
45592	Coastal TPA, Inc	Dental and vision reimbursement claims	08/20/2020	264.15
45611	Pacific Grove Self Storage	Storage unit for city art	08/27/2020	280.00
45615	Coastal TPA, Inc	Dental and vision reimbursement claims	08/28/2020	156.00
Total for Department: 120 Library				980.15

Department: 121 Community Activities

45614	US Bank	Canva subscription	08/27/2020	12.95
Total for Department: 121 Community Activities				12.95

Department: 122 Economic Revitalization

45575	Sunset Cultural Center Inc.	FY 2020-21 Sunset Center Operating Grant: Quarter 1	08/17/2020	144,375.00
45591	Carmel Chamber of Commerce	FY 2020-21 Visitor Center operation support 50% allocation	08/20/2020	7,500.00
Total for Department: 122 Economic Revitalization				151,875.00

Department: 130 Non-Departmental

45562	Cal-Am Water Company	Water service citywide	08/17/2020	9,609.16
45571	Pacific Gas & Electric	Gas & electric service citywide	08/17/2020	8,541.50
45606	De Lage Landen Financial	Monterey County property tax fee	08/27/2020	33.83
Total for Department: 130 Non-Departmental				18,184.49
Grand Total				489,602.90

August Contract Payments:

Vendor	Contract Amt	Paid through August	Contract Balance
Pen Messenger	\$ 72,000.00	\$ 51,332.00	\$ 20,668.00
Chavan & Assoc.	\$ 32,000.00	\$ 11,700.00	\$ 20,300.00
Sloan SY & Wong	\$ 75,000.00	\$ 20,896.72	\$ 54,103.28
Pureserve	\$ 198,349.00	\$ 31,391.50	\$ 166,957.50



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Britt Avrit, City Clerk
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-061 extending for 90 days the terms ending September 30, 2020 for the members of the Community Activities & Cultural Commission, Forest & Beach Commission, Harrison Memorial Library Board of Trustees and Historic Resources Board

RECOMMENDATION:

Adopt Resolution 2020-061 extending for 90 days the terms ending September 30, 2020 for the members of the Community Activities & Cultural Commission, Forest & Beach Commission, Harrison Memorial Library Board of Trustees and Historic Resources Board

BACKGROUND/SUMMARY:

City Boards and Commissions perform a valuable service to the City by providing means by which the City Council can obtain advice, opinions, and recommendations of City residents and other members of the community.

Mayor Potter and Mayor Pro Tem Richards comprised the Ad Hoc Committee and interviewed the applicants for the Board and Commission vacancies. The applicants demonstrated a strong commitment to service and a desire to serve the Carmel-by-the-Sea community. The Ad Hoc Committee is appreciative of all community members of diverse backgrounds and exceptional skill sets, who filled out an application and participated in the interview process.

Sections 2.28.030, 2.32.030, 2.36.030, 2.72.030 and 2.74.010 (D) (2), of the Carmel-by-the-Sea Municipal Code provide that the City Council, with the consent of the incumbent, may extend the incumbent's term for up to 90 days. The Ad Hoc Committee wishes to meet with applicants a second time to ensure the appointments made to the City's Boards and Commissions are done in a manner that provides the most benefit to each of the Boards and Commissions and the community as a whole.

In order to ensure the Boards and Commission do not have issues obtaining a quorum, it is necessary to extend the terms of the currently serving Board Members and Commissioners until December 8, 2020, when the appointments can be ratified by the City Council.

FISCAL IMPACT:

None for this action.

PRIOR CITY COUNCIL ACTION:

The City Council annually ratifies appointments to vacancies occurring September 30 of each year.

ATTACHMENTS:

Attachment #1 - Resolution 2020-061 Board and Commission term extension

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-061

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
EXTENDING FOR 90 DAYS THE TERMS ENDING SEPTEMBER 30, 2020 FOR THE
MEMBERS OF THE COMMUNITY ACTIVITIES COMMISSION, FOREST & BEACH
COMMISSION, HARRISON MEMORIAL LIBRARY BOARD OF TRUSTEES AND HISTORIC
RESOURCES BOARD**

WHEREAS, City Boards and Commissions perform a valuable service to the City by providing means by which the City Council can obtain advice, opinions, and recommendations of City residents and other members of the community; and

WHEREAS, the Mayor and Mayor Pro Tempore comprised the Ad Hoc Committee and interviewed the applicants for the Board and Commission vacancies; and

WHEREAS, the applicants demonstrated a strong commitment to service and a desire to serve the Carmel-by-the-Sea community; and

WHEREAS, the Ad Hoc Committee is appreciative of all community members of diverse backgrounds and exceptional skill sets, who filled out an application and participated in the interview process; and

WHEREAS, Sections 2.28.030, 2.32.030, 2.36.030, 2.72.030 and 2.74.010 (D) (2), of the Carmel-by-the-Sea Municipal Code provide that the City Council, with the consent of the incumbent, may extend the incumbent's term for up to 90 days; and

WHEREAS, the Ad Hoc Committee wishes to meet with applicants a second time to ensure the appointments made to the City's Boards and Commissions are done in a manner that provides the most benefit to each of the Boards and Commissions and the community as a whole.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Extend the terms of the following individuals until December 8, 2020:

Donna Jett - Community Activities Commission; and

Tara Twomey - Harrison Memorial Library Board of Trustees; and

Al Saroyan – Forest & Beach Commission; and

Karyl Hall – Historic Resources Board; and

Thomas Hood – Historic Resources Board

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 6th day of October, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
CONSENT AGENDA**

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Paul Tomasi, Chief of Police & Director, Public Safety
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-062 authorizing the City Administrator to retroactively extend the contract for animal services with the Monterey County Health Department's Animal Services Division ending June 30, 2021

RECOMMENDATION:

Adopt Resolution 2020-062 authorizing the City Administrator to retroactively extend the contract for animal services with the Monterey County Health Department's Animal Services Division ending June 30, 2021.

BACKGROUND/SUMMARY:

In August 2014, the City entered into an agreement with the Monterey County Health Department's Animal Services Division to provide animal services. The current agreement was entered into on July 1, 2014, and was for three years, expiring June 30, 2017. In September 2019, City Council approved Amendment #1 to extend the existing contract for two years, ending June 30, 2019. A new contract has not been crafted and an extension to the existing contract is being requested, Amendment #2. The extension would keep the current contract valid until June 30, 2021.

The Monterey County Health Department's Animal Services Division is responsible for providing animal control services in the unincorporated areas of Monterey County. It also operates an Animal Services Center located at 160 Hitchcock Road, Salinas, CA that offers an array of services, including but not limited to shelter, veterinary, quarantine, and licensing services. The Animal Service Center was built in conjunction with the Cities of Carmel-by-the-Sea, Gonzales, Greenfield, Sand City, Seaside, Soledad, and King City. Each of these cities has paid a share of the Animal Services Center's construction costs and is offered the option to contract with the County for the use of the shelter and other services.

The City of Carmel-by-the-Sea desires to continue its contract with the County for the provision of services at the Animal Services Center as delineated in the Agreement. Generally, the services to be provided to the City of Carmel-by-the-Sea by the County Health Department's Animal Services Division include shelter at the Animal Service Center, emergency medical treatment, rabies quarantine and management, and other services for stray domestic animals found within the incorporated boundaries of the City. The City of Carmel-by-the-Sea will compensate the County for provision of animal services as set forth in the agreement. The contract agreement has been reviewed by the City Attorney and approved to form.

FISCAL IMPACT:

The Police Department FY 20/21 budget has allocated funds to cover any costs related to Monterey County Animal Services under Contract Services Account 101-116-00-42001 not to exceed \$3500.

PRIOR CITY COUNCIL ACTION:

August 2014, The City entered into a three year agreement with the County of Monterey for use of Animal Services.

August 2017, The City approved a two year extension of the existing contract with Monterey County for use of Animal Services.

ATTACHMENTS:

Attachment #1 - Resolution 2020-062 Agreement with Monterey County Animal Services Center
Animal Services Agreement #A-12754

Amendment #1 July 2017

Amendment #2 July 2019

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-062

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR TO RETROACTIVELY EXTEND THE CONTRACT FOR ANIMAL SERVICES WITH THE MONTEREY COUNTY HEALTH DEPARTMENT'S ANIMAL SERVICES DIVISION ENDING JUNE 30, 2021

WHEREAS, in August 2014, the city entered into an agreement with Monterey County Animal Services Center for use of the County Animal Services Center;

WHEREAS, the agreement was for four years ending June 30, 2017; and

WHEREAS, a two-year extension of the contract was approved in 2017, extending the contract to June 30, 2019; and

WHEREAS, a retroactive agreement is being requested with the County to extend the agreement ending June 30, 2021; and

WHEREAS, the agreement remains unchanged other than those items identified in the amendment.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Authorize the City Administrator to retroactively renew the agreement with Monterey County Animal Services Center extending the service contract until June 30, 2021.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

AGREEMENT NO. A-12754
 FOR USE OF THE ANIMAL SERVICES CENTER AND OTHER ANIMAL SERVICES
 FY 2015-2017

This Agreement ("Agreement") for the use of the Animal Services Center and the provision of other animal services is between the County of Monterey, a political subdivision of the State of California ("COUNTY"), doing business as the Animal Services Division of the Department of Health, and the City of Carmel-by-the-Sea ("CITY"). It is effective between July 1, 2014, and June 30, 2017. COUNTY and CITY are sometimes referred to in this Agreement as a "party" or, collectively, as "the Parties."

RECITALS

WHEREAS, the COUNTY has established the Health Department Animal Services Center, located at 160 Hitchcock Road, Salinas, to shelter animals within the unincorporated areas of the county; and

WHEREAS, the CITY desires to contract with the COUNTY for the provision of services at the Animal Services Center as described below; and

WHEREAS, the COUNTY agrees to provide such services in accordance with the provisions of this Agreement, Title 8 of the Monterey County Code and applicable law.

NOW, THEREFORE, IT IS IMUTUALLY AGREED AS FOLLOWS:

1. DEFINITIONS

Domestic Animals include cats, dogs, rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles or tortoises, and other similar animals customarily kept as household pets. This definition shall not be construed to include livestock, large animals, or wildlife.

Exotic Animals are any animals that are not indigenous to Monterey County, are not livestock, and are not a household pet, whether domesticated or not, or protected or not. Exotic animals include nondomestic animals, animals native to a foreign country or of foreign origin or character, or animals that are not commonly kept as pets.

Large Animals are all animals exceeding 200 pounds in weight.

Livestock includes every horse, ass, burro, donkey, mule, equine creature, cow, bull, steer, heifer, ox, bovine creature, llama, sheep, goat, hog, and domesticated bird not customarily kept as household pets.

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FOR USE OF THE ANIMAL SERVICES CENTER AND OTHER ANIMAL SERVICES
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Wildlife includes any animal that is indigenous to Monterey County, and not domesticated, protected or not. Wildlife does not include, among other animals, feral livestock, household pets or exotic animals.

2. ANIMAL SERVICES TO BE PROVIDED BY COUNTY

COUNTY's responsibilities for shelter and veterinary services under this Agreement do not apply to exotic animals, large animals, livestock, or wildlife.

A. Program Management and Administration

COUNTY shall manage and administer the Animal Services Center to provide appropriate facilities, staffing, and record maintenance.

B. Shelter Services and Disposition of Animals

COUNTY shall provide shelter at the Animal Services Center for stray domestic animals found within the incorporated boundaries of the CITY. Shelter services shall include the administration tasks necessary for surrender of such animals at the Animal Services Center, the care of animals during the holding period, and final disposal of animals through redemption, adoption, or humane euthanasia and disposal. COUNTY shall shelter such animals received at the Animal Service Center in accordance with applicable state regulations, local ordinances, and policies governing humane treatment of animals.

C. Disposal of Domestic Animal Carcasses

Upon request from CITY, COUNTY shall arrange for the proper disposal of domestic animal carcasses.

D. Emergency Medical Treatment

1. Request: Upon prior written request and approval from CITY, COUNTY may arrange for emergency medical treatment of CITY domestic animals either at COUNTY's veterinary clinic or with an outside veterinary clinic with which COUNTY has a current contract for the provision of medical services. Where, due to the exigent nature of circumstances, prior written request is not possible without endangering the well-being of the animal, COUNTY shall confirm an oral request for veterinary treatment made by a CITY, in writing, as soon as possible.

2. Payment/Rates: COUNTY shall bill CITY for the emergency medical services provided at (1) the current Board-approved rates for care provided by COUNTY's veterinary clinic or (2) contract rates for care provided by contract veterinary clinics. Where treatment is needed, in the judgment of the COUNTY's contract veterinary clinics, which exceeds the limits established by contract with the COUNTY, CITY

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FOR USE OF THE ANIMAL SERVICES CENTER AND OTHER ANIMAL SERVICES
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shall provide written authorization to the COUNTY to provide those services before they are rendered.

3. Transportation to COUNTY contract veterinary clinics:
 - a. Where an animal requiring emergency medical treatment is in COUNTY's custody at the Animal Services Center, COUNTY staff shall transport the animal to the veterinary clinic.
 - b. Where an animal requiring emergency medical treatment is not in COUNTY's custody at the Animal Services Center, CITY staff shall request COUNTY for emergency medical services to be provided to animal and CITY staff shall transport animal directly to the COUNTY's contract veterinary clinic. COUNTY shall notify the contract veterinary clinic that an animal is being delivered for the provision of medical services pursuant to COUNTY contract.
4. Alternatively, CITY may independently procure its own arrangements for emergency medical treatment for animals needing such care in its jurisdiction. After an animal is treated and in stable condition, CITY may deliver the animal to the COUNTY for shelter services at the Animal Services Center.

E. Rabid Animals

COUNTY shall perform the following rabid animal services:

- I. Where a human being or domestic animal is bitten by a potentially rabid animal, either domestic or wildlife, COUNTY will:
 1. Transport tissue to the County Health Department for testing;
 2. Dispose remains of rabid animals;
 3. Report rabid animal incidents to appropriate agencies.
 4. CITY shall be responsible for the cost of decapitation and de-braining (with the exception of bats, which are delivered whole) as required for laboratory testing.
- II. Where a human being or domestic animal is exposed or bitten by a bat or skunk only, which are species deemed at high risk of rabies, COUNTY will perform the above services and will be responsible for attendant costs.

F. Quarantine

COUNTY shall manage the quarantine of biting domestic animals pursuant to state regulations and local ordinances. In addition, COUNTY shall be responsible for keeping required records and reporting of information to the State Department of Health.

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FOR USE OF THE ANIMAL SERVICES CENTER AND OTHER ANIMAL SERVICES
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G. Reports

COUNTY shall provide CITY with quarterly reports that include:

1. Total number of animals provided with shelter services and veterinary services.
2. Disposition of each animal.

H. Field Services

Field Services—such as picking up domestic animals running at large, conducting investigations of potentially dangerous and vicious dogs, conducting bite investigations, responding to nuisance complaints (e.g., barking dogs), or checking on possible instances of neglect or inhumane treatment of animals when they occur within CITY limits—shall not be provided to CITY by COUNTY.

3. CITY RESPONSIBILITIES FOR ANIMAL SERVICES

A. Prosecution of Case Violations

The CITY Attorney may exercise the discretion vested in his or her office to prosecute violations of the City Animal Ordinance, and take appropriate legal action with respect to the abatement of any violations under the City Animal Ordinance involving animals occurring within CITY's corporate limits.

B. Large Animal, Wildlife, and Livestock Services

1. CITY shall provide all services related to large animals, wildlife, and livestock.
2. COUNTY shall provide services related to rabies per Section 2.C of this Agreement both within CITY limits and in unincorporated areas of the COUNTY.

C. Cooperate with and Assist COUNTY

To facilitate the performance of the foregoing functions, it is hereby agreed that the COUNTY shall have the full cooperation and assistance from the CITY, its officers, agents and employees.

4. COOPERATION

- A. CITY and COUNTY staff shall meet once per year to discuss program needs.
- B. Upon request from CITY, COUNTY shall provide training to CITY staff on topics of interest to CITY.

5. TERM AND TERMINATION

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A. Term

This Agreement shall be effective on July 1, 2014 and shall terminate on June 30, 2017, unless sooner terminated pursuant to the terms of this Agreement.

B. Termination

During the term of this Agreement, either party may terminate the Agreement by giving written notice of termination to the other party at least sixty (60) days before the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be based on the number of animals sheltered by the COUNTY before the termination date.

6. PAYMENT

- A. The CITY shall be billed at a rate of \$160.00 per stray animal found within the incorporated boundaries of the CITY and admitted to the Animal Services Center for shelter services up to the ten-day holding period required by Monterey Code section 8.32.010B(1) (rabies/suspected rabies quarantine).
- B. Upon request and written approval from CITY, COUNTY shall provide shelter services in addition to the ten-day holding period specified above. If requested, CITY shall be billed at a rate of \$25.00 per day for animals provided additional shelter beyond the ten-day holding period.
- C. Where an animal is released to the owner and owner pays all fees related to the care of the animal, CITY shall not be charged for services provided to the animal.
- D. The CITY shall be billed at a rate of \$25.00 for the disposal of each domestic animal carcass.
- E. The CITY will be billed for the cost of decapitation and de-braining specified in Section 2(E)(I) of this Agreement at \$155.00 per animal. For animals weighing 35 pounds or more, an additional fee of \$50.00 per hour will be billed.

7. MUTUAL INDEMNIFICATION

- A. CITY hereby agrees to indemnify, defend, and save harmless COUNTY and its officers, agents, and employees, to the extent permitted by applicable law, from and against all claims and/or losses whatsoever accruing or resulting to any person, firm, or corporation

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for damages, injury, or death occurred by reason of any act or failure to act by CITY or CITY's officers, agents, and employees in connection with the performance of this Agreement.

- B. COUNTY hereby agrees to indemnify, defend, and save harmless CITY and its officers, agents, and employees, to the extent permitted by applicable law, from and against all claims and/or losses whatsoever accruing or resulting to any person, firm, or corporation for damages, injury, or death occurred by reason of any act or failure to act by COUNTY or COUNTY's officers, agents, and employees in connection with the performance of this Agreement.

8. INSURANCE

- A. Without limiting COUNTY's or CITY's duty to indemnify each other, each party shall have a program of self-insurance or policies of insurance in effect during the term of this Agreement with the following minimum limits of liability:
1. Commercial general liability, including but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence; and
 2. Comprehensive automobile liability covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit of not less than \$500,000 per occurrence; and
 3. Workers' compensation insurance in accordance with California Labor Code, Section 3700, and with a minimum of \$100,000 per occurrence for employer's liability.
- B. In the event that a party maintains insurance as required by this Agreement, such insurance shall be with the company acceptable to the parties to this Agreement and authorized by law to conduct insurance business in the State of California. All such insurance shall be written on an occurrence basis, or if the policy is not written on an occurrence basis, such policy with a coverage required herein shall continue in effect for a period of two (2) years following the date any party to this Agreement completes its performance of services under this Agreement.

Each liability policy shall provide that the COUNTY and CITY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or non-renewal

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thereof. Each policy shall provide identical coverage for each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance showing each subcontractor has identical coverage.

Prior to the execution of the Agreement by the COUNTY, the CITY shall file certificates of insurance or self-insurance with Monterey County Risk Management Officer, showing that all parties have in effect the insurance required by this Agreement. Similarly, the COUNTY shall file certificates of insurance or self-insurance with the CITY, showing that all parties have in effect the insurance required by this Agreement. The CITY and the COUNTY shall file a new or amended certificate of insurance or self-insurance promptly after any change is made to any insurance policy or program of self-insurance, which would alter the information of the certificate then on file. Acceptance or approval of insurance or program of self-insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

9. EQUAL OPPORTUNITY

During the performance of this Agreement, the parties shall not unlawfully discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), or sexual preference, either in the parties' employment practices or in the furnishing of services to recipients. The parties shall ensure that the evaluation and treatment of its employees and applicants for employment and all person receiving and requesting services are free of such discrimination. The parties shall, during the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

10. EMPLOYEE STATUS

All persons employed in the performance of services to be provided by COUNTY as described in Section 2 of this Agreement shall be COUNTY employees. No current CITY employee shall become COUNTY employee by reason of this Agreement and no COUNTY employee performing services hereunder shall have CITY pension or Civil Service status or right.

11. RECORDS AND AUDITING REQUIREMENTS

The parties shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulation and shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation,

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claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three (3) year period, then the parties shall retain said records until such violation is resolved.

12. GENERAL PROVISIONS

A. Amendment

This Agreement may be amended or modified only by an instrument in writing and signed by all parties hereto.

B. Governing Law

This agreement shall be governed by and interpreted under the laws of the State of California.

C. Compliance with Applicable Law

The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

D. Construction of Agreement

The parties agree that each party has fully participated in the review and revision of this Agreement that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment thereto.

E. Waiver

Any waiver of any terms and conditions of this Agreement must be in writing and signed by the COUNTY and CITY. Any waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

F. Construction of Agreement

COUNTY and CITY agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

G. Integration

This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior

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negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof.

H. Notices

Any notices required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to the COUNTY and CITY at:

COUNTY	CITY
Director of Health	Chief of Police
1270 Natividad Road	P.O. Box 600
Salinas, CA 93906	Carmel-by-the-Sea, CA 93921
Phone: 831-755-4526	Phone: 831-624-6403
Fax: 831-755-4797	Fax: 831-624-4296

IN WITNESS WHEREOF, COUNTY and CITY have executed this Agreement as of the day and year first above written.

COUNTY OF MONTEREY

By: _____
 Contracts/Purchasing Officer

Date: _____

By: _____
 Department Head (if applicable)

Date: _____

Approved as to Form

By: Rebecca M. Duncanson
 County Counsel

Date: Sept 5, 2014

Approved as to Fiscal Provisions

By: [Signature]
 Auditor/Controller

Date: 9-5-14

CITY

 Carmel-by-Sea

By: [Signature]

Jason Stilwell, City Administrator
 Name and Title

Date: 8/20/14

By: [Signature]

Mike Calhoon, Public Safety Director
 Name and Title

Date: 8/18/14

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FOR USE OF THE ANIMAL SERVICES CENTER AND OTHER ANIMAL SERVICES
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Approved as to Liability Provisions

By:

Risk Management

Date:

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION 2014-053

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR AND DIRECTOR OF PUBLIC SAFETY TO
SIGN AN AGREEMENT WITH THE COUNTY OF MONTEREY FOR USE OF THE ANIMAL SERVICES CENTER
FOR THE PERIOD FROM JULY 1, 2014 THROUGH JUNE 30, 2017.**

WHEREAS, the County of Monterey has established the Health Department Animal Services Center, located at 160 Hitchcock Road, Salinas, to shelter animals within the unincorporated areas of the county; and

WHEREAS, the Animal Services Center was built in conjunction with the Cities of Carmel-by-the-Sea, Gonzales, Greenfield, Sand City, Seaside, Soledad and King City; and each city is offered the option to contract with the County for the use of the shelter and other services,

WHEREAS, the city of Carmel-by-the-Sea desires to contract with the County of Monterey for the provision of services at the Animal Services Center as described in the agreement; and,

WHEREAS, the County of Monterey agrees to provide such services in accordance with the provisions of the agreement, Title 8 of the Monterey County Code and applicable law for a period from July 1, 2014 through June 30, 2017.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA does hereby:

1. Adopt the Resolution authorizing the City Administrator and Public Safety Director to sign the agreement with the County of Monterey for use of the Animal Services Center.
2. Authorize police expenditures for the use of Animal Services for (3) years for FY 2014/15, 2015/16 and 2016/17 from the police budget contract services account 01-74053.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 5th day of August 2014 by the following vote:

AYES: 5 COUNCIL MEMBERS: Talmage, Theis, Beach, Dallas, Burnett

NOES: 0 COUNCIL MEMBERS:

ABSENT: 0 COUNCIL MEMBERS:

ABSTAIN: 0 COUNCIL MEMBERS:

ATTEST:


Lori Frontella, MMC
Interim City Clerk

APPROVED:


Jason Burnett, Mayor

AMENDMENT No. 1 TO AGREEMENT**BY & BETWEEN****COUNTY OF MONTEREY
&
CITY OF CARMEL-BY-THE-
SEA**

THIS AMENDMENT No. 1 is made to the Agreement ("AGREEMENT") by and between City of Carmel-by-the-Sea ("CONTRACTOR"), and the County of Monterey, a political subdivision of the State of California ("County").

WHEREAS, CONTRACTOR entered into an AGREEMENT effective July 1, 2014 through June 30, 2017; and

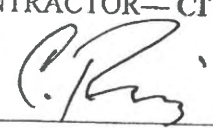
WHEREAS, County and CONTRACTOR wish to amend this agreement via Amendment No. 1 to extend the term for two (2) years to June 30, 2019; and

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

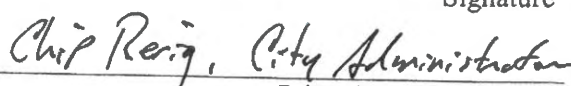
1. "TERM OF AGREEMENT", is amended to read as follows: It is effective between July 1, 2014 and June 30, 2019.
2. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect.
3. A copy of this AMENDMENT No. 1 shall be attached to the original AGREEMENT effective July 1, 2014, and shall be incorporated therein as if fully set forth in the Agreement.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

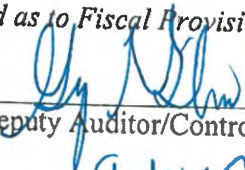
MONTEREY COUNTY**CONTRACTOR—CITY OF CARMEL-
BY-THE-SEA**


Contracts/Purchasing Officer
By: 

Signature

Dated: 9-18-17


Printed Name and Title

Approved as to Fiscal Provisions:
Deputy Auditor/Controller

Dated:

8-24-17

Dated:

9-14-17

By:

Signature

*Approved as to Liability Provisions:*Paul Tomasi, Public Safety Director
Printed Name and Title

Risk Management

Dated:

8-24-17

Dated:

Approved as to Form:
Deputy County Counsel

Dated:

Sept 14, 2017

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

AMENDMENT NO. 2 TO AGREEMENT
BY & BETWEEN
COUNTY OF MONTEREY
&
CITY OF CARMEL BY THE SEA

THIS Amendment No. 2 is made to Agreement, No. A-12754, for the use and services of the Monterey County Animal Services Center by and between the City of Carmel-By-The-Sea (“CITY”) and the County of Monterey, a political subdivision of the State of California (“COUNTY”).

WHEREAS, the COUNTY and CITY have heretofore entered into an Agreement for animal services in accordance with Title 8 of the Monterey County Code and applicable law for a term of July 1, 2014 through June 30, 2017; and

WHEREAS, the COUNTY and CITY entered into Amendment No. 1 to said Agreement to extend the term of the Agreement for two (2) years to June 30, 2019; and

WHEREAS, the COUNTY and CITY wish to amend the Agreement to extend the term of the Agreement two (2) years, from July 1, 2019 through June 30, 2021.

NOW THEREFORE, the COUNTY and CITY hereby agree to amend the Agreement in the following manner:

1. Section 5, TERM AND TERMINATION,
 - A. Term, shall be amended by removing, “This Agreement shall be effective on July 1, 2014 and shall terminate on June 30, 2017, unless sooner terminated pursuant to the terms of this Agreement.”, and replacing it with “This Agreement shall be effective on July 1, 2014 and shall terminate on June 30, 2021, unless sooner terminated pursuant to the terms of this Agreement.”
2. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement.
3. The recitals to this Amendment No. 2 are hereby incorporated by this reference.
4. A copy of this Amendment No. 2 shall be attached to the Agreement dated, 09/05/2014.

This Section Left Blank Intentionally

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 2 on the day and year written below.

MONTEREY COUNTY

CONTRACTOR

By: _____

Contracts/Purchasing Officer

Date: _____

Approved as to Fiscal Provisions:_____
Deputy Auditor/Controller

Date: _____

Approved as to Liability Provisions:_____
Risk Management

Date: _____

Approved as to Form:_____
Deputy County Counsel

Date: _____

Director of Health

Date: _____

City of Carmel-By-the-Sea

Contractor's Business Name*

By: _____

(Signature of Chair, President or Vice-President)

Printed Name and Title

Date: _____

By: _____

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*_____
Printed Name and Title

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
CONSENT AGENDA**

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Britt Avrit, City Clerk

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-063, amending Policy C89-02 City Council Rules and Procedures

RECOMMENDATION:

Adopt Resolution 2020-063, amending Policy C89-02 City Council Rules and Procedures.

BACKGROUND/SUMMARY:

On August 2, 1988, the City adopted Resolution 88-89 establishing the orders of business for the City Council Agenda and on June 5, 2012 adopted Resolution 2012-33 amending Policy C89-02 by reducing the number of agenda categories.

The amendment provided in Exhibit A to Resolution 2020-063 updates the Policy as follows:

- changes the appointment of the Mayor Pro Tempore from May of each year to January of each year
- removes the specific time for the meeting of the Mayor, Mayor Pro Tempore, City Administrator and City Clerk with regard to finalizing the draft agenda
- clarifies reading of Ordinances
- removes the specific retention of meeting recordings in this policy
- fixes various grammatical issues throughout

Prior to November, 2018 the City conducted a General Municipal Election in April of even-numbered years and appointment of a Mayor Pro Tempore in May was appropriate timing for this action. Since November, 2018 the City has conducted its elections in November of even-numbered years. Staff recommends appointing the Mayor Pro Tempore in January of each year. This will allow adequate time for the County of Monterey Elections Office to certify the election results following the November election and allows for timing of the agenda item to be placed on the January City Council agenda.

Each month the Mayor, Mayor Pro Tempore, City Administrator and City Clerk meet to finalize the draft agenda for the following City Council meeting. Staff recommends removing the specific timing for holding this meeting to allow flexibility in setting this monthly meeting.

Currently, Policy C89-02 states Ordinances require two readings and do not become effective until 30 days

after the second reading. Staff recommends adding verbiage regarding Urgency Ordinances as these Ordinances do not always require a second reading or a 30-day delay to be effective.

Further, Policy C89-02 provides a specific retention for meeting recordings. Staff recommends removing the specific retention period from this Policy as the City Council adopted a City-wide retention schedule as part of its Records Management Program. Listing retention of City records in various policies is not suggested as, at times, the City may amend the Retention Schedule and having this information in one Policy document provides a more efficient way of ensuring retention is consistent throughout.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

August 2, 1988; adopted Resolution 88-89
June 5, 2012; adopted Resolution 2012-33

ATTACHMENTS:

Attachment #1 - Resolution 2020-063 Amending Policy C89-02 City Council Rules and Procedures
Attachment #2 - Policy C89-02-redline
Attachment #3 - Resolution 88-89
Attachment #4 - Resolution 2012-33

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-063

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING POLICY C89-02 CITY COUNCIL RULES AND PROCEDURES**

WHEREAS, the City adopted Resolution 88-89 establishing the orders of business for the City Council Agenda; and

WHEREAS, the City adopted Resolution 2012-33 amending the Policy by reducing the number of agenda categories; and

WHEREAS, appointment the Mayor Pro Tempore is appropriate to take place in January of each year to allow time for the Monterey County Elections Office to certify election results following the November election in even-numbered years; and

WHEREAS, it is appropriate to clean up the Policy from time-to time to reflect current practices and to be in line with other City Policies.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Amend Policy C89-02 City Council Rules and Procedures, as provided in Exhibit A

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

**CITY OF CARMEL-BY-THE-SEA
POLICY AND PROCEDURE**

Subject: City Council Meetings/Orders of Council/Agenda Packets/Minutes of Meeting and Agenda Distribution	Policy/Procedure No: C89-02
Effective Date: 2 August 1988	Authority: Resolution No. 88-89

Purpose:

To provide a guide for the City Council and staff for the conduct of public meetings, agenda and minute preparation and distribution of agenda packets.

Policy/Procedure:

1. Adoption of action minutes as outlined in the attached memorandum from the League of California Cities .
2. Adoption of City Clerk's policy regarding agenda packets (No packets shall be disseminated until the packets are made available to the City Council).
3. Adoption of the sequence of the Orders of Council as set forth in the policy attached.

Responsible Party:

City Administrator/City Clerk

Department of Origin:

Administration/City Council

Revision Dates:

2 March 2009 (28 October 2008 Council Retreat)

5 June 2012 (Resolution No. 2012-33)

6 October 2020 (Resolution No. 2020-XX)

Rescinded Date :

CITY OF CARMEL-BY-THE-SEA CITY COUNCIL RULES AND PROCEDURES

The City Council is composed of five members: Mayor and four Council Members. The Mayor serves a two-year term and members of the City Council serve four year terms.

I. ELECTED OFFICIALS

A. Mayor (directly elected since 1978)

The Mayor is the chair of the meeting and, as such, presides at all Council meetings. As the titular head of the City Council, the Mayor represents the City at quasi-governmental and social functions and may represent the City Council before other governmental bodies on specific matters as may be authorized by the City Council.

B. Mayor Pro Tempore

The Mayor Pro Tempore is appointed by the Mayor in ~~May~~ January. The Mayor Pro Tempore shall not serve more than two consecutive one-year terms. This appointment is announced by the Mayor, but does not need to be ratified by the City Council. In the absence of the Mayor, the Mayor Pro Tempore shall chair the City Council meetings and may attend social/quasi-governmental functions on behalf of the City.

C. Absence of both the Mayor and Mayor Pro Tempore

In the absence of both the Mayor and Mayor Pro Tempore, members of the City Council shall appoint an acting Mayor Pro Tempore, who shall have the powers and duties of the Mayor Pro Tempore as described above.

II. CITY COUNCIL MEETINGS

City Council meeting dates and types (e.g. Regular, Special, Closed Session, Tour of Inspection) are regulated by Chapter 2 of the Municipal Code.

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Only items that are agendaized may be acted on at any Council meeting.

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The draft agenda is prepared by the City Administrator and City Clerk with the input of all department directors and is reviewed at weekly staff Management meetings.

- Agenda Finalization

The Mayor and Mayor Pro Tempore meet with the City Administrator and City Clerk ~~nine business days~~ prior to the meeting to finalize the draft agenda.

- Continuance of Agenda Item

Any City Council member who is ill or will be away from the City may request, in writing, that an item of "personal interest" or a "major issue" be continued to the next meeting. The City Council shall vote on the issue of continuance.

- Agenda Posting

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The Orders of City Council business are adopted by Resolution of the City Council. The Orders of City Council Business are:

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This category allows the City Council to recognize volunteers, employees, present certificates of appreciation and awards.

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This category allows an opportunity for City Council Members to comment on meetings attended of outside agencies and the City Administrator to give a brief report to the City Council and receive presentations that require little or no action.

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The public has opportunities to speak to the City Council. The Public Appearances section allows persons to speak a maximum of three minutes, or as otherwise established by the City Council, on items of City business, other than those scheduled agenda items. Matters not appearing on the City Council's agenda will not receive action at that meeting but may be referred to staff for a future meeting or resolution outside of a City Council meeting. The City Council reserves the right to limit the duration of the Public Appearances section of the agenda to thirty minutes total.

Members of the public are entitled to directly address the City Council concerning any item that is described in the notice of the City Council meeting during consideration of that item. Public comments or testimony on agenda items other than Public Appearances shall be limited to a maximum of three minutes per speaker.

- Consent Agenda

Consent Agenda items will be voted on in one motion unless removed. The Consent Agenda consists of routine and non-controversial City matters that can be as a whole approved by a single majority vote. Any City Council Member or member of the public may ask to have an item pulled from the Consent Agenda for discussion. Such items are normally moved to the end of the meeting.

If a City Council Member has a question for information only about a Consent Agenda item, the Member should ask prior to the meeting, rather than pulling the item for discussion during the meeting.

Corrections to the Minutes are given to the City Clerk prior to the meeting so that corrections can be made prior to their adoption.

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Orders of Council include reports of committee/commissions, ordinances and resolutions, public hearings, reports of officials, unfinished business, and council matters.

Public Hearings consist of zoning amendments, General Plan amendments, appeals of Commission decisions and other items mandated by the State. If the Public Hearing is an appeal, appellants are allowed a total of 10 minutes to speak on their own behalf after the staff report and at the close of public comment in order to have the opportunity to rebut public comments. Other speakers will be allowed three minutes. Formal Public Hearings must be advertised pursuant to State and Government Codes.

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A resolution is a formal form of a motion normally utilized to set forth policy of the City. Each resolution, in addition to being referenced by number and brief title in the minutes, will be recorded as provided by law and maintained in numerical sequence as a permanent record of the City in a separate set of books. Resolutions are used for various reasons, such as when specifically required by law, when needed as a separate evidentiary document to be transmitted to another governmental agency, or where the frequency of future references back to its contents warrants a separate document to facilitate such future reference and research.

III. CONDUCT OF CITY COUNCIL MEETINGS

A. General Procedure

It is the policy of the Council not to become involved in entanglements over parliamentary procedure. Pursuant to the Municipal Code, the Chair-Mayor shall have authority to prevent the misuse of motions, or the abuse of any privilege, or obstruction of the business of the Council by ruling any such matter out of order. The Mayor will assist the Council to focus on the agenda, discussions and deliberations. He/she has been delegated the responsibility to control the debate and order of the speakers.

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With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. That Council Member may respond while the floor is still held by the Council Member asking the question.

Council Members will limit their comments to the subject matter, item or motion being currently considered by the Council. They will govern themselves as to the length of their comments or presentation.

C. Meeting Procedures for review of Each Item on the Agenda (with the exception of Public Hearings:

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- Staff will present a brief report.
- City Council questions of staff.

Upon recognition by the Mayor, Members of City Council may ask questions of the staff prior to opening of the discussion to members of the audience.

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Any member of the public wishing to address the Council orally on a specific agenda item may do so when the item is taken up by Council, or as otherwise specified by the Council or its presiding officer. Oral presentations are limited to three minutes, unless otherwise provided.

Persons who anticipate oral presentations exceeding three minutes are encouraged to submit comments in writing to the City Clerk, by the Tuesday prior to the meeting so they may be included in the agenda packet. In order to expedite matters and to avoid repetitious presentations, whenever any group of persons wishes to address Council on the same subject matter, the presiding officer may request that a spokesperson be chosen by the group. A specified time limit also may be set for the total presentation for any group.

- Close of Public Comment

Once public comment is closed, it cannot be reopened unless Council agrees by consensus.

- Staff response to questions from the public.

Based on staff responses to the public, members of the City Council may wish to address further questions to staff.

- The Mayor/City Administrator/Attorney shall remind the City Council of the action before Council.
- City Council discussion
- City Council action/motions

Before a motion can be considered or debated, it must be seconded. Once the motion has been properly made and seconded, the Chair shall open the matter for discussion offering the first opportunity to the moving party and, thereafter, to any City Council Member properly recognized by the Chair. Once the matter has been fully discussed and the Chair calls for a vote, no further discussion will be allowed.

Council Members may be allowed to explain their vote briefly for the record. Once a vote is taken, all Council Members shall support the action taken.

- Substitute motions

When a motion is on the floor, any member of City Council may make a substitute motion. If the substitute motion is seconded, it shall be acted upon prior to acting on the main motion.

- Tie votes

A tie vote results in a failed motion. In such an instance, any member of the Council may offer a motion for further action. If there is no action by an affirmative vote, the result is no action. If the matter involves an appeal and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-making persons or body from which the appeal was taken.

- Motions to reconsider

Motions to reconsider a matter may be made at the same meeting or at the next succeeding meeting following a Council action for reconsideration. Such motions must be made by a Council Member voting in favor of the original motion.

- Staff announcement of decision

The Mayor, City Administrator, City Attorney, or City Clerk shall announce the vote and passage or failure of an item.

E. Meeting Procedure for formal Appeals/Public Hearings

When a matter for public hearing comes before the City Council, the Mayor shall inquire if there are any persons present who desire to speak on the matter which is to be heard or to present any evidence regarding the matter.

The procedure for holding City Council appeals differs from other items where the public is allowed to speak in that appellants are allowed to have 10 minutes to make a presentation, including closing comments. The public testimony follows, after which the appellants are given an opportunity for rebuttal or closing arguments.

- Public comments/discussion

No person will be permitted during the hearing to speak about matters or present any evidence that is not germane to the matter being considered. A determination of relevance shall be made by the Mayor or City Attorney, but may be appealed by any Member of the City Council.

F. Minutes of Meeting Policy (C 89-02)

The Minutes of the City Council meeting are action minutes and do not reflect City Council commentary and discussion. However, if a Council Member wishes to include comments in the record, they will be included if so requested at the meeting. (e.g. "for the record, I wish to state...")

- Items entered into the record

All agenda items/documentation/correspondence received at a Council meeting shall be retained in the ~~Clerk's~~ City's records.

- Distribution

The minutes shall be distributed to members of the City Council for comment and/or correction in the Council packet. The City Clerk will correct the minutes prior to the meeting, and if the correction is substantive, copies of the corrected minutes shall be distributed to all members of the Council.

G. **Official Recordings of the Meeting**

All City Council meetings are recorded. This ensures accuracy of the minutes and provides a temporary record of the City Council proceedings. Once the minutes are approved, legally, the recordings do not have to be retained. However, recordings of the Council meetings ~~are retained for 10 years~~; Planning Commission ~~for seven years~~ meetings, ; and recordings of other commissions/boards ~~for two years~~ shall be retained pursuant to the City's adopted Retention Schedule.

Amended: ~~June 5, 2012~~ October 6, 2020

COUNCIL MINUTES

A. PREFACE

City Clerks in general law cities are specifically required to keep a record, journal or minutes of the council meetings (Gov. C. 36814, 40801). Cities governed by freeholder's charters are usually subject to the same requirements. Although there is no legal necessity to do so, it is appropriate to mention, introductorily, in the minutes that the meeting was convened and held as noticed.

B. PURPOSE OF COUNCIL MINUTES

A most important principle of corporation law, applicable to private, public, and municipal corporations, is that such organizations can only ~~eat~~act through their officers and employees. These corporations are governed by fixed rules found in the basic law of the organization; in charter and state statutes in the case of municipal corporations.

When these factors are considered, the keeping of a good record of council proceedings becomes obvious. A sufficient record must be kept to furnish evidence that the ~~city council~~City Council has complied with the law or rules by which it is governed, thus pointing to the need for accurate and clear records of council proceedings. Finally, if accurate, complete, and unambiguous minutes of ~~City Council~~City Council meetings are recorded, these facts themselves will be treated as conclusive evidence of the facts therein stated.

C. FORM AND CONTENTS OF COUNCIL MEETING MINUTES

1. Standard Forms:

Use of standardized format is recommended to develop uniformity on minute entries and to save time in composing the record.

2. Jurisdictional Matters

To establish proof that jurisdictional requirements for holding a meeting have been complied with, it is important that minutes contain the following:

- a. Date, hour, and place of meeting.
- b. Whether it is a regular, adjourned, or special meeting.
- c. A proper notice has been given if it is a special meeting.
- d. The names of council members in attendance (in case a council member arrives late, or departs before adjournment, the minutes should show the time of arrival and/or departure at that point in the proceedings).

3. Approval of Minutes of Previous Meetings

Although there is no legal requirement that minutes be approved by the ~~council~~City Council, this traditional procedure is advisable as it lends further weight to the accuracy and completeness of the record. It is recommended that the ~~City Council~~City Council be furnished copies of minutes in sufficient time prior to a ~~City Council~~City Council meeting to avoid any necessity of reading of the minutes by the clerk. When approved as written, or as changed by the ~~City Council~~City Council, the minutes are considered to be official.

4. Record of Action Taken

The minutes need only record:

a. Petitions and communications

1. Date of the document
2. Subject
3. Authors, if only a few
4. Number of signers, if numerous
5. Action taken

The minutes need not record the comments made by members of the City Council concerning the merit or lack of merit of the petition or requests contained in the document, unless expressly requested by the officer making such comment. The reason for the latter observation is that the document speaks for itself, and it has no legal significance until the City Council acts or refuses to act with respect thereto.

b. Consideration of bids

1. Record of bids filed and opened
 - a. The subject matter of the bids
 - b. The compliance with all requirements for the advertising for such bids.
 - c. The names of all bidders, and the total amounts of their respective bids.
2. Action taken with respect to bids.
 - a. It is preferable that a resolution, prepared or approved by the ~~e~~City ~~a~~Attorney, be used in awarding contracts to the successful bidder. When this is done, the minutes need only refer to the resolution in recording the action taken.
 - b. If the City Council determines to accept a bid which is not the lowest in amount, it is advisable that the minutes show that such bid was "the lowest reasonable bid". Whether the minutes should include a record of the matters leading to the determination of "responsibility" is a decision clerks might well review with their City Attorneys.
 - c. Ordinances and resolutions

1. Introduction

The information which should be recorded in ~~council~~City Council minutes, with respect to the introduction of an ordinance, depends upon the particular rules or practices of each city on the subject. Thus, if the practice requires that before an ordinance or resolution can be acted upon, it shall be introduced by one ~~Council~~City Council Member, and seconded by another, this information should be recorded in the minutes.

Generally speaking, minutes should record the following data concerning the introduction of an ordinance or resolution:

- aa. The title or subject matter
- bb. The names of the ~~council~~City Council ~~M~~members introducing and seconding

2. Compliance with jurisdictional requirements prior to action taken on ordinances or resolutions

Whenever the basic law or rules of a city require that a certain procedure must be followed prior to any action taken in adopting an ordinance or resolution, the minutes should show such compliance. This would include a statement referring to the previous introduction of the ordinance and would include a reference on an urgency ordinance that it is an urgency ordinance.

3. Votes cast for or against adoption of ordinances and resolutions

aa. Presumption of validity of ordinances and resolutions. There is a presumption in favor of the due and regular adoption or rejection of a city ordinance or resolution, if there are any official records to support that presumption, and that the votes were cast in substantial accordance with the requirements of the law or regulations pertaining to such matters.

This is particularly true where the ordinance or resolution contains a certificate signed by the mayor and/or clerk.

bb. Voting procedure governing adoption of ordinances and regulations (See Chapter VI on legislative Procedures)

d. Reports of officers

1. Written reports

Since any written record is the best evidence of its contents, a written report presented at a ~~council~~City Council meeting need only be mentioned in the minutes by reference to:

- aa. Name or title of the officer
- bb. Date of the report
- cc. Subject or title of report
- dd. Disposition made of report, if any

CITY COUNCIL

CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 88-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA ESTABLISHING THE ORDERS OF BUSINESS
FOR THE CITY COUNCIL AGENDA

WHEREAS, many citizens of Carmel-by-the-Sea have requested that the orders of business be modified; and

WHEREAS, after consideration of the opinions expressed by the citizens of Carmel-by-the-Sea, the City Council determined that changes in the sequence of the orders of business coming before it were appropriate; and

WHEREAS, adoption of the Orders of Business by Resolution rather than by Ordinance will facilitate future changes as needs may arise;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES:

1. Establish the Orders of Business as follows:

A. Tour of Inspection

1. The Tour of Inspection shall convene on the site of the first item on the agenda.
2. The Tour of Inspection shall begin at 3:30 p.m. the Monday preceding the first Regularly scheduled Council meeting of each month.
3. If the scheduled date for the Tour of Inspection falls on a holiday, the Tour of Inspection shall be held at 10:00 a.m., Tuesday, the day of the Regular Council Meeting.

B. The Regular Meeting:

1. The Regular Meeting shall be held on the first Tuesday of each month at 3:00 p.m.
2. The Orders of the City Council Business shall be as follows:
 - a. Closed Session (3:00 p.m.)
 - b. Open Session (4:00 p.m.)
 1. Roll Call
 2. Pledge of Allegiance
 3. Extraordinary Business
 4. Closed Session and City Council Announcements
 5. Public Hearings
 6. Ordinances
 7. Appearances
 8. Orders of Council
 9. Resolutions
 10. Consent Calendar
 11. Adjournment

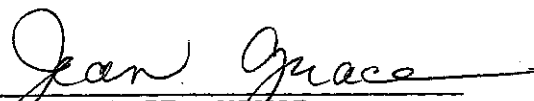
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 2nd day of August, 1988, by the following roll call vote:

AYES: COUNCIL MEMBERS: Fischer, Laiolo, White, Wright, Grace

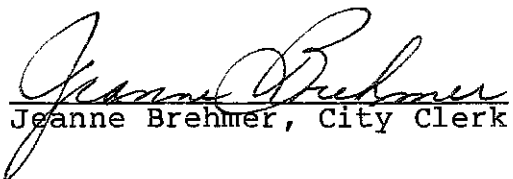
NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

SIGNED,


JEAN GRACE, MAYOR
City of Carmel-by-the-Sea

ATTEST:


Jeanne Brehmer, City Clerk

CITY COUNCIL
CITY OF CARMEL-BY-THE-SEA
RESOLUTION 2012-33

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING COUNCIL AGENDA POLICY C-89 (COUNCIL ORDERS OF BUSINESS)**

WHEREAS, the City Council last amended its Agenda Policy C-89 (Orders of Business) on October 28, 2008; and

WHEREAS, this policy establishes the structure of the City Council; and

WHEREAS, the proposed amendments, that reduce the number of agenda categories from seven to five, are intended to group similar items closer together on the agenda, to allow them to be discussed by subject rather than by type of action, and to foster improved opportunity for public comment.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES:

1. Approve the amended policy as shown in Attachment "A".

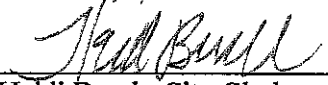
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 5th day of June 2012, by the following roll call vote:

AYES:	COUNCIL MEMBERS:	BEACH; HAZDOVAC; HILLYARD; TALMAGE & BURNETT
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

SIGNED,


JASON BURNETT, MAYOR

ATTEST,


Heidi Burch, City Clerk

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL
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Any member of the public wishing to address the Council orally on a specific agenda item may do so when the item is taken up by Council, or as otherwise specified by the Council or its presiding officer. Oral presentations are limited to three minutes, unless otherwise provided.

Persons who anticipate oral presentations exceeding three minutes are encouraged to submit comments in writing to the City Clerk, by the Tuesday prior to the meeting so they may be included in the agenda packet. In order to expedite matters and to avoid repetitious presentations, whenever any group of persons wishes to address Council on the same subject matter, the presiding officer may request that a spokesperson be chosen

by the group. A specified time limit also may be set for the total presentation for any group.

- Close of Public Comment

Once public comment is closed, it cannot be reopened unless Council agrees by consensus.

- Staff response to questions from the public.

Based on staff responses to the public, members of the City Council may wish to address further questions to staff.

- The Mayor/City Administrator/Attorney shall remind the City Council of the action before Council.
- City Council discussion
- City Council action/motions

Before a motion can be considered or debated, it must be seconded. Once the motion has been properly made and seconded, the Chair shall open the matter for discussion offering the first opportunity to the moving party and, thereafter, to any City Council Member properly recognized by the Chair. Once the matter has been fully discussed and the Chair calls for a vote, no further discussion will be allowed.

Council Members may be allowed to explain their vote briefly for the record. Once a vote is taken, all Council Members shall support the action taken.

- Substitute motions

When a motion is on the floor, any member of City Council may make a substitute motion. If the substitute motion is seconded, it shall be acted upon prior to acting on the main motion.

- Tie votes

A tie vote results in a failed motion. In such an instance, any member of the Council may offer a motion for further action. If there is no action by an affirmative vote, the result is no action. If the matter involves an appeal and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-making persons or body from which the appeal was taken.

- Motions to reconsider

Motions to reconsider a matter may be made at the same meeting or at the next succeeding meeting following a Council action for reconsideration. Such motions must be made by a Council Member voting in favor of the original motion.

- Staff announcement of decision

The Mayor, City Administrator, City Attorney, or City Clerk shall announce the vote and passage or failure of an item.

E. Meeting Procedure for formal Appeals/Public Hearings

When a matter for public hearing comes before the City Council, the Mayor shall inquire if there are any persons present who desire to speak on the matter which is to be heard or to present any evidence regarding the matter.

The procedure for holding City Council appeals differs from other items where the public is allowed to speak in that appellants are allowed to have 10 minutes to make a presentation, including closing comments. The public testimony follows, after which the appellants are given an opportunity for rebuttal or closing arguments.

- Public comments/discussion

No person will be permitted during the hearing to speak about matters or present any evidence that is not germane to the matter being considered. A determination of relevance shall be made by the Mayor or City Attorney, but may be appealed by any Member of the City Council.

F. Minutes of Meeting Policy (C 89-02)

The Minutes of the City Council meeting are action minutes and do not reflect City Council commentary and discussion. However, if a Council Member wishes to include comments in the record, they will be included if so requested at the meeting. (e.g. "for the record, I wish to state...")

- Items entered into the record

All agenda items/documentation/correspondence received at a Council meeting shall be retained in the Clerk's records.

- Distribution

The minutes shall be distributed to members of the City Council for comment and/or correction in the Council packet. The City Clerk will correct the minutes prior to the meeting, and if the correction is substantive, copies of the corrected minutes shall be distributed to all members of the Council.

G. Official Recordings of the Meeting

All City Council meetings are recorded. This ensures accuracy of the minutes and provides a temporary record of the City Council proceedings. Once the minutes are approved, legally, the recordings do not have to be retained. However, recordings of the Council meetings are retained for 10 years; Planning Commission for seven years; and recordings of other commissions/boards for two years.

Amended: June 5, 2012



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Britt Avrit, City Clerk

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-064, amending Policy C95-01 Claims Against the City

RECOMMENDATION:

Adopt Resolution 2020-064, amending Policy C95-01 Claims Against the City.

BACKGROUND/SUMMARY:

On January 10, 1995, the City adopted Resolution 95-06 rescinding Policy 89-18 and Resolution 94-46, and incorporating and amending the substance of both documents into Policy C95-01. On May 5, 2020 the City adopted Resolution 2020-029 amending Policy C95-01 incorporating the authority to deny claims.

Resolution 2020-029 updated the Policy to provide the City Administrator the authority to delegate denying claims and to approve settlement of claims against the City up to \$50,000.

The amendment provided in Exhibit A to Resolution 2020-064 updates the Policy to further provide the City Administrator the authority to approve payment of the City's deductible up to \$50,000 on any claim against the City.

The Policy continues to provide that the City Administrator is authorized to present any claim to the City Council at his, or her, sole discretion.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

April 5, 1994; adopted Resolution 94-46
January 10, 1995; adopted Resolution 95-06
May 2, 2020; adopted Resolution 2020-029

ATTACHMENTS:

Attachment #1 - Resolution 2020-064 Amending Policy C95-01, Claims Against the City
Attachment #2 - Policy C95-01-redline
Attachment #3 - Resolution 94-46
Attachment #4 - Resolution 95-06
Attachment #5 - Resolution 2020-029

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-064

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING POLICY C95-01 CLAIMS AGAINST THE CITY**

WHEREAS, the City adopted Resolution 95-06 rescinding Policy 89-18 and Resolution 94-46 and incorporating and amending the substance of both documents into Policy C95-01; and

WHEREAS, the City adopted Resolution 2020-029 providing the City Administrator the authority to delegate denying and settlement of claims against the City up to \$50,000; and

WHEREAS, California government Code Section 935.4 allows public entities the authority, by ordinance or resolution, to authorize an employee to deny claims and to allow, compromise or settle a claim against the local public entity if the amount to be paid pursuant to the allowance, compromise or settlement is fifty thousand dollars (\$50,000) or less.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY
OF CARMEL-BY-THE-SEA DOES HEREBY:**

Amend Policy C95-01 Claims Against the City, as provided in Exhibit A

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 6th day of October, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

**CITY OF CARMEL-BY-THE-SEA
POLICY AND PROCEDURE**

Subject: Claims against the City	Policy/Procedure No: C95-01
Effective Date: 5 May 2020	Authority: Resolution No. 2020-029

Purpose:

Delegate authority for the denial and settlement of claims against the City.

Policy/Procedure:

Pursuant to California Government Code Section 935.4, the City Administrator or his/her designee is authorized to deny any claim against the City and to settle any all claims against the City up to \$50,000 and to approve payment of the City's deductible up to \$50,000 on any claim against the City.

The City Administrator is authorized to cause any individual claim to be presented to the City Council for consideration and action, at his or her sole discretion.

Department of Origin:

Administration

Revision Dates:

Resolution 95-06 January 10, 1995

Resolution No. 94-46 and rescinded Policy No. C89-18

Resolution No. 85-107

Rescinded Date:

CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL
RESOLUTION NO. 94-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA DELEGATING TO THE CITY ADMINISTRATOR
THE AUTHORITY TO PERFORM CERTAIN FUNCTIONS CONCERNING THE
PROCESSING OF TORT CLAIMS AND OTHER CLAIMS, PAYMENT FOR WHICH
HAS NOT BEEN PREVIOUSLY AUTHORIZED BY CITY COUNCIL ACTION

WHEREAS, Section 935.4 of the Government Code of the State of California enables a City Council to delegate to a specified City employee the authority in connection with certain claims against the City for money or damages, to perform certain functions otherwise performed by the City Council; and

WHEREAS, the City Council desires to expedite the processing of such future claims for money or damages as may be filed by the City;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES:

1. Authorize the City Administrator henceforth to deny and refer all claims against the City for money or damages up to \$50,000.
2. Authorize the City Administrator to cause any individual claim to be presented to the City Council for consideration and action, in his sole discretion.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 5th day of April, 1994, by the following roll call vote:

AYES: COUNCIL MEMBERS: Coniglio, Fischer, Livingston, Brooks

NOES: COUNCIL MEMBERS: None

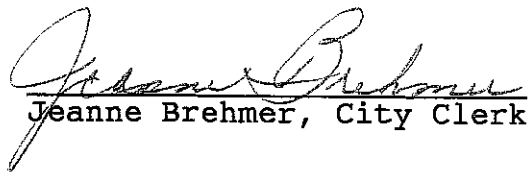
ABSENT: COUNCIL MEMBERS: White

SIGNED,



BARBARA BROOKS, MAYOR PRO TEMPORE
City of Carmel-by-the-Sea

ATTEST:


Jeanne Brehmer, City Clerk

City Council
City of Carmel-by-the-Sea
Resolution No. 95-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA RESCINDING POLICY C89-18 AND RESOLUTION NO. 94-46 AND INCORPORATING AND AMENDING THE SUBSTANCE OF BOTH DOCUMENTS INTO POLICY C95-01, CLAIMS FOR DAMAGES

WHEREAS, on December 17, 1985, the City Council adopted Policy C89-18 authorizing staff to administer and settle claims under \$1200, subject to the City Attorney's review; and

WHEREAS, to ease the administrative burden, claims up to \$5,000 should be delegated to staff for processing; and

WHEREAS, on April 5, 1994, the City Council adopted Resolution No. 94-46 authorizing the City Administrator to deny and refer claims against the City for money or damages up to \$50,000 pursuant to Government Code Section 935.4; and

WHEREAS, it is recommended that policies regarding claims for damages should be consolidated into one policy;

THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES:

1. Rescind Resolution No. 94-46 and Policy C89-18.
2. Consolidate the substance of Resolution No. 94-46 and C89-18, as amended to reflect staff's authority to settle claims in an amount not to exceed \$5000, by adopting Policy C95-01 attached hereto and incorporated herein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 10th day of January 1995, by the following roll call vote:

AYES: COUNCIL MEMBERS: Fischer, Hazdovac, Livingston, White

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Coniglio

SIGNED,

ATTEST:


Jeanne Brehmer, City Clerk


KEN WHITE, MAYOR
City of Carmel-by-the-Sea

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-029

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING POLICY C95-01 CLAIMS AGAINST THE CITY**

WHEREAS, the City adopted Resolution 95-06 rescinding Policy 89-18 and Resolution 94-46 and incorporating and amending the substance of both documents into Policy C95-01; and

WHEREAS, California government Code Section 935.4 allows public entities the authority, by ordinance or resolution, to authorize an employee to deny claims and to allow, compromise or settle a claim against the local public entity if the amount to be paid pursuant to the allowance, compromise or settlement is fifty thousand dollars (\$50,000) or less.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY
OF CARMEL-BY-THE-SEA DOES HEREBY:**

Amend Policy C95-01 Claims Against the City, as provided in Exhibit A

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 5th day of May, 2020, by the following vote:**

AYES: COUNCIL MEMBERS BARON, REIMERS, THEIS; MAYOR PRO TEM
RICHARDS; MAYOR POTTER

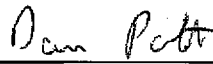
NOES: NONE

ABSENT: NONE

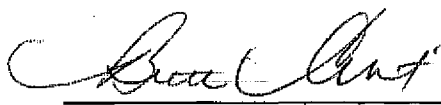
ABSTAIN: NONE

APPROVED:

ATTEST:



Dave Potter
Mayor



Britt Avrit, MMC
City Clerk

C95-01

**CITY OF CARMEL-BY-THE-SEA
POLICY AND PROCEDURE**

Subject: Claims against the City	Policy/Procedure No: C95-01
Effective Date: 5 May 2020	Authority: Resolution No. 2020-029

Purpose:

Delegate authority for the denial and settlement of claims against the City.

Policy/Procedure:

Pursuant to California Government Code Section 935.4, the City Administrator or his/her designee is authorized to deny any claim against the City and to settle any claim against the City and the settlement payment may not exceed \$50,000.

The City Administrator is authorized to cause any individual claim to be presented to the City Council for consideration and action, at his or her sole discretion.

Department of Origin:

Administration

Revision Dates:

Resolution 95-06 January 10, 1995

Resolution No. 94-46 and rescinded Policy No. C89-18

Resolution No. 85-107

Rescinded Date:



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Sharon Friedrichsen - Director, Contracts and Budgets

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-065 authorizing the City Administrator to execute an agreement with the Monterey County Convention and Visitors Bureau for Destination Marketing for the term of July 1, 2020 to June 30, 2021 in an amount not to exceed \$120,040

RECOMMENDATION:

Adopt Resolution 2020-065 authorizing the City Administrator to execute an agreement with the Monterey County Convention and Visitors Bureau for Destination Marketing for the term of July 1, 2020 to June 30, 2021 in an amount not to exceed \$120,040.

BACKGROUND/SUMMARY:

Transient occupancy tax and sales and use tax are significant revenue sources for the City and provide funding for various City programs and services. The City has historically partnered with the Monterey County Convention and Visitors Bureau (MCCVB) to manage visitors, including promoting overnight stays within the Village during mid-week and off-season. MCCVB has specialized expertise and experience in regional marketing of the Monterey Peninsula, which includes the City of Carmel-by-the-Sea.

The purpose of this agenda item is for Council to approve an agreement with MCCVB for destination marketing in accordance with the Carmel Municipal Code. The hospitality sector has been economically impacted by the coronavirus, leading to a decrease in corresponding City revenues related to tourism. The proposed agreement with MCCVB funds marketing efforts intended to create interest and visitation to the City, including educating visitors on safe and responsible travel including adherence to COVID-19 related protocols.

FISCAL IMPACT:

The Fiscal Year 2020-2021 Adopted Budget includes funding for this purpose.

PRIOR CITY COUNCIL ACTION:

Council adopted a similar agreement with MCCVB on July 2, 2019.

ATTACHMENTS:

Attachment #1 - Resolution 2020-065, Authorize FY20-21 MCCVB Agreement
Attachment #2 - MCCVB CBTS Agreement_FY2021

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-065

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH THE MONTEREY COUNTY CONVENTION AND VISITORS BUREAU FOR DESTINATION MARKETING FOR THE TERM OF JULY 1, 2020 TO JUNE 30, 2021 IN AN AMOUNT NOT TO EXCEED \$120,040

WHEREAS, transient occupancy tax and sales and use tax contribute to the City of Carmel-by-the-Sea's revenue sources and are heavily influenced by tourism; and

WHEREAS, the City wishes to promote overnight stays within the Village and the Fiscal Year 2020-2021 Adopted Budget includes funding for this purpose; and

WHEREAS, the Monterey County Convention and Visitors Bureau possesses specialized knowledge and benefits from economy of scale in advertising and other marketing efforts in order to promote tourism within the Monterey Peninsula region, including the City of Carmel-by-the-Sea; and

WHEREAS, the City wishes to enter into an agreement with the Monterey County Convention and Visitors Bureau for destination marketing services and contracts of \$25,000 or more require Council approval in accordance with the Carmel Municipal Code.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Authorize the City Administrator to execute an agreement with the Monterey County Convention and Visitors Bureau for destination marketing for the term of July 1, 2020 through June 30, 2021 in an amount not to exceed \$120,040.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

THIS AGREEMENT is effective as of July 1, 2020 and is entered into by and between the City of Carmel-by-the-Sea, a municipal corporation, (hereinafter "City"), and the **Monterey County Convention and Visitors Bureau**, (hereinafter "Consultant"), collectively referred to herein as the "parties".

WHEREAS, the City wishes to engage Consultant to perform the services required by this Agreement; and,

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions; and

WHEREAS, Consultant represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

- A. **Scope of Services.** Consultant agrees to create interest, visitation and drive overnight stays within the City of Carmel-by-the-Sea as the scope of services ("Scope of Services") under this Agreement.
- i. Stimulate interest in key feeder markets as mutually agreed to encourage visits to Carmel-by-the-Sea
 - ii. Marketing through advertising, promotions and social media to promote Carmel-by-the-Sea as a preferred leisure destination
 - iii. Promoting Monterey County Tourism Improvement District collecting Carmel-by-the-Sea hotels, inns and lodging establishments on MCCVB's website
 - iv. Provide semi-annual reports highlighting MCCVB's web and digital activity and media relations as they pertain to Carmel-by-the-Sea and the economic impact of MCCVB's performance to the City

2. COMPENSATION

- A. **Total Fee.** The City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement a total amount not-to-exceed **One Hundred Twenty Thousand and Forty Dollars (\$120,040)**. Payment of any compensation to Consultant hereunder shall be contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If the City determines that the Services set forth in this Agreement have not been performed in accordance with the terms of this Agreement, the City shall not be responsible for payment until the Services have been satisfactorily performed.
- B. **Invoicing.** Consultant shall submit to the City **quarterly invoices** to the City's Project Representative, identified in Section 5 herein. The City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, the City shall not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

Consultant shall be responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Consultant, its employees, subconsultants and vendors of services or goods.

C. Audit and Examination of Accounts:

- i. Consultant shall keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
- ii. Any audit conducted of books of records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.
- iii. Consultant hereby agrees to disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City.
- iv. Consultant shall include the requirements of Section 2C in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of services hereunder. All records, which pertain to actual disputes, litigation, appeals or claims, shall be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

3. AGREEMENT TERM

- A. **Term.** The work under this Agreement shall commence by **July 1, 2020** and shall be completed by **June 30, 2021**.

4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Not an Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.
- B. **Independent Contractor.** Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City shall not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for herein. Consultant shall be solely liable for the work quality and conditions of any partners, employees and subconsultants.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. In connection therewith, Consultant shall defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

5. REPRESENTATIVES AND COMMUNICATIONS

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: Chip Rerig
Title: City Administrator, City of Carmel-by-the Sea
Address: P. O. Box CC, Carmel-by-the-Sea, CA 93921
Telephone: 831.620.2058
Email: crerig@ci.carmel.ca.us

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: Rob O'Keefe
Title: President/CEO
Monterey County Convention and Visitors Bureau
Address: P.O. Box 1770, Monterey, CA 93942
Telephone: 831.657.6425
Email: Rob@seemonterey.com

- C. **Meet and Confer.** Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as set forth herein as may be required by the City to insure timely and adequate performance of this Agreement.
- D. **Communications and Notices.** All communications between the City and Consultant regarding this Agreement, including performance of Services, shall be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and shall be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

6. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnatee shall not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnatee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

Consultant further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Consultant's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Consultant or any of Consultant's employees, agents, subconsultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

In no event shall the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782 and 2782.6.

7. INSURANCE

Consultant shall submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either:
 - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; **or**
 - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exceptions may be made for the State Compensation Insurance Fund when not specifically rated.
 - ii. Each insurance policy required by this Agreement shall not be canceled, except with prior written notice to the City.
 - iii. The general liability and auto policies shall:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea shall be excess to the Consultant's insurance and shall not contribute with it.
 - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
 - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
 - iv. Prior to the start of work under this Agreement, Consultant shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
Monterey County Convention & Visitors Bureau**

Attachment 2

- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Consultant as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies shall be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retention ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event shall any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.
- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- viii. Consultant shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein.

8. PERFORMANCE STANDARDS

- A. **Performance Standards**. Consultant agrees to the following performance standards for the term of this Agreement; Consultant and City agree that due to the impact of COVID-19 new benchmarks will be established this year:
 - i. MCCVB will collaborate with the City and Visit Carmel on the development and implementation of a COVID-19 inspired responsible travel campaign
 - ii. MCCVB shall produce social engagements for Carmel-by-the-Sea during the off-season time period of November 2020 - May 2021
 - iii. MCCVB will work with Visit Carmel to cross-promote Carmel-by-the-Sea in one focused social post per quarter
 - iv. MCCVB will include Carmel-by-the-Sea within its 2020-21 group marketing programs
 - v. MCCVB will include Carmel-by-the-Sea within its 2020-21 public relations programs
 - vi. MCCVB will attend Visit Carmel Board Meetings as requested and also hold up to four 30 minute "working sessions" as requested with Visit Carmel to gauge progress in meeting objectives and make adjustments in marketing strategies as needed
 - vii. Visit Carmel Executive Director will hold a position on MCCVB Marketing Committee
 - viii. MCCVB will continue to collaborate with the City and Visit Carmel on the Sustainable Moments initiative on ways to engage engagements and participation in Carmel-by-the-Sea Sustainable Moments landing page, which is aimed at educating visitors on responsible and sustainable tourism

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- ix. MCCVB will maintain a robust program highlighting the promotional events and content at the Sunset Center upon its opening through its custom Sunset Center microsite; by supporting Sunset Center events in the online event calendar and creating quarterly blogs in conjunction with Sunset Center staff.

9. CONFIDENTIALITY

- A. **No Disclosure.** Consultant shall keep confidential and shall not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant shall not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant shall promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section shall survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant shall not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received shall be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City shall not be liable or responsible for the disclosure of any such records and the Consultant shall indemnify, defend, and hold the City harmless for any such disclosure.

10. CONFLICT OF INTEREST

Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they shall conduct their duties related to this Agreement with impartiality, and shall, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;
- B. Shall not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- C. Shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant shall promptly declare it to the City, and;

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- D. Shall not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

11. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties shall make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City's Project Representative and Consultant's Project Manager shall make reasonable efforts to resolve any Dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter shall be promptly referred to the Mayor or Mayor Pro Tempore and the Consultant's Chair of the Board of Directors who shall meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.
- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the Mayor or Mayor Pro Tempore pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation shall not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute shall be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

**CITY OF CARMEL-BY-THE-SEA
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- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

12. TERMINATION OF AGREEMENT

- A. Both parties may terminate this Agreement, in whole or in part, at any time during the Agreement Term upon ninety (90) days written notice. The amount of damages, if any, as result of such termination may be decided by negotiations between the parties or binding arbitration as specified in Section 11 A-D above. If either party should terminate this Agreement, Consultant shall be paid for work completed up to the date of termination.

13. LEGAL ACTION / VENUE

- A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.

14. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination.** During the performance of this Agreement, Consultant, and its subconsultants, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, veteran status or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.
- B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.

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- C. **Force Majeure.** Either party shall be absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
- D. **Headings.** The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter.
- F. **Counterparts and Transmission of Agreement by Email.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement. The parties agree that this Agreement may be signed and transmitted by email and shall have the same force and legal effect as an original.
- G. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.
- H. **Authority.** Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- I. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- J. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.

**CITY OF CARMEL-BY-THE-SEA
PROFESSIONAL SERVICES AGREEMENT
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- K. **Assignment of Interest**. The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.
- L. **Laws**. Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

By: _____ Date: _____
Chip Rerig, City Administrator

CONSULTANT

By: _____ Date: _____
Rob O'Keefe, President/CEO

ATTEST:

By: _____ Date: _____
Britt Avrit, City Clerk

ATTEST:

By: _____ Date: _____
Brian Pierik, City Attorney



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Robin Scattini, Finance Manager

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-066 accepting a donation of \$5,000 from an anonymous donor for Mutt Mitt sponsorships and approving a budget amendment in the amount of \$18,850 to the Fiscal Year 2020-2021 Adopted Budget to account for all Mutt Mitt sponsorships received as of September 21, 2020

RECOMMENDATION:

Adopt Resolution 2020-066 accepting a donation of \$5,000 from an anonymous donor for Mutt Mitt sponsorships and approving a budget amendment in the amount of \$18,850 to the Fiscal Year 2020-2021 Adopted Budget to account for all Mutt Mitt sponsorships received as of September 21, 2020.

BACKGROUND/SUMMARY:

In order to mitigate the loss of revenue and minimize the use of prior years' savings (i.e. fund balance), the Fiscal Year 2020-2021 adopted budgeted significantly curtailed expenditures. One of the curtailed expenditure items was the purchase of Mutt Mitts pet waste disposal bags. Councilmember Jan Reimers spearheaded a campaign for the City to receive donations from individuals and businesses for the sponsorship of purchasing Mutt Mitts to fill the City's various Mutt Mitt dispensers. As of September 21, 2020, sponsors have generously donated a total amount of \$18,850, inclusive of \$5,000 from an anonymous donor. These funds need to be added to the FY2020-2021 adopted budget.

FISCAL IMPACT:

The supplemental appropriation request totals \$18,850. However, the increased appropriations are offset by recognizing donation revenue.

PRIOR CITY COUNCIL ACTION:

None for this item.

ATTACHMENTS:

Reso 2020-066 Acceptance of 5K donation for Mutt Mitt sponsorship and budget amendment

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-066

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA ACCEPTING A DONATION OF \$5,000 FROM AN ANONYMOUS DONOR FOR MUTT MITT SPONSORSHIP AND APPROVING A BUDGET AMENDMENT IN THE AMOUNT OF \$18,850 TO THE FISCAL YEAR 2020-2021 ADOPTED BUDGET TO ACCOUNT FOR ALL MUTT MITT SPONSORSHIPS RECEIVED AS OF SEPTEMBER 21, 2020

WHEREAS, the City Council adopted Resolution 2020-040 approving the Fiscal Year 2020-2021 Adopted Budget on June 16, 2020; and

WHEREAS, an anonymous donor wishes to donate \$5,000 for Mutt Mitt sponsorship and a total amount of \$18,850 has been donated for Mutt Mitt sponsorships as of September 21, 2020; and

WHEREAS, City Council is required to accept donations of \$2,500 or more in accordance with the City Council Donation and Gift Policy (Policy 2017-02); and

WHEREAS, the proposed budget amendment will increase the amount of Fiscal Year 2020-2021 budgeted revenue to offset increased expenditures within the Public Works Department's operating budget to purchase Mutt Mitts.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Approves a budget amendment to increase the Fiscal Year 2020-20201 Adopted Budget by \$18,850 as shown in the attached Exhibit A.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

EXHIBIT A

General Ledger Account and Description	Purpose	FY 2020-21 Adopted Budget	Adjustment Amount	FY 2020-21 Amended Budget
101-000-00-36621 General Fund Revenue- Donations-Public Works	Increase Public Works donation revenue to recognize FY 20- 21 Mutt Mitt sponsorships	\$5,000	\$18,850	\$23,850
101-119-40-42105 General Fund Expenditures Public Works Department Admin Division Materials and Supplies	Increase Material and Supplies budget to purchase Mutt Mitts	\$46,500	\$18,850	\$65,350



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Robert Harary, P.E, Director of Public Works
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-067 accepting donations from Carmel Cares, a volunteer organization

RECOMMENDATION:

Adopt Resolution 2020-067 accepting donations from Carmel Cares, a volunteer organization.

BACKGROUND/SUMMARY:

The City of Carmel-by-the-Sea in general, and the Public Works Department in particular, have benefitted significantly from a number of volunteers and non-profit organizations who have stepped up to help us maintain and beautify the City during these difficult economic times resulting from the COVID-19 Pandemic.

One new volunteer organization, called “Carmel Cares,” has been particularly helpful to Public Works this year. The City’s partnership with Carmel Cares has been very exciting, bold, and mutually beneficial, and we hope this partnership continues for years to come.

According to them, “Carmel Cares is a group of Carmelites dedicated to keeping Carmel-by-the-Sea a beautiful, inviting and safe place. We help by partnering with the City of Carmel and non-profits whereby our volunteers work on maintenance and improvement projects as well as community engagement programs. We do most of the work ourselves, but also fund various projects through a partnership with CarmelGives.org and the Carmel Chamber of Commerce. Email us at CarmelCares1@gmail.com to volunteer or donate. To learn more go to www.CarmelCares.org.”

Carmel Cares is recruiting Volunteer Caretakers to take responsibility for coordinating maintenance and improvements in key areas around town. They currently have leaders for Forest Theater, Sunset Center Campus, and Scenic Pathway. Other volunteers help these leaders and professional landscaping companies assist them on special projects. They have also created unique physical structures around Carmel that provide specific functions and add to Carmel’s character.

Carmel Cares is also credited with the creation of two unique, community engagement volunteer groups. First is the “Tree Tenders” program which allows residents to adopt pine and oak seedlings and raise them until they are ready to be planted in Carmel’s urban forest. The second group is the “Median Minds”

program which allows residents to adopt and maintain nearby median islands and easements throughout the City. Both of these groups operate and maintain the medians under the guidance of the City Forester and Public Works Director.

Recently, Carmel Cares teamed up with the Carmel Gives Fund, which is a fund of the Community Foundation for Monterey County. Carmel Gives was started by realtor Tim Allen in April 2020 and has raised \$300,000 to date. Their goal is to assist businesses that have been impacted by COVID-19 with Win/Win projects that also assist non-profits and individuals in need. Dale Byrne is both the Chief Caring Officer for Carmel Cares and the Project Manager for Carmel Gives, and the two organizations are working closely to create the maximum impact. Carmel Gives uses the Carmel Chamber to execute their grant payments.

The City's Support Groups Policy No. 89-47 describes a scenario where a volunteer group is "formed" with a board, bylaws, and audited financial records. Further, an agreement between the City and the volunteer group is executed and identifies the requirements of both parties. Examples of formally-recognized support groups, which have been active and supportive of City initiatives for years, include the Carmel Public Library Foundation, Friends of Carmel Forest, and Friends of the Mission Trail Nature Preserve (MTNP). Mr. Byrne has stated that Carmel Cares, and its' associated volunteer groups, would prefer to not become a formal organization nor register to be a 501(c)(3) non-profit at this time, principally because of their relationship with Carmel Gives which does function as a 501(c)(3).

The City also has a Donation and Gift Policy No. 2017-02, which was last updated in 2017 and appears to be more pertinent to the volunteer efforts by Carmel Cares. The purpose of this policy is to, *"establish a formal process for the acceptance and documentation of donations made to the City in a responsible, transparent, and accountable manner."* Donations of items valued at \$2,499 or below may be accepted by the City Administrator. Donations of items valued at \$2,500 or more must be accepted by the City Council. A Donation Acceptance Form is filled out and issued to the donor for all non-labor donations. The Donation and Gift Policy is included as Attachment 2.

The City Council has accepted a wide range of donations and gifts over the past few years under the Donation and Gift Policy. Recent examples include: electric vehicle chargers from ChargePoint, two electric bicycles for the Police Department, fire pits for Carmel Beach, and most recently a \$5,000 donation from the Friends of MTNP for materials associated with the Willow Creek drainage repair. This policy works well for isolated donations. Staff will be monitoring the \$2,500 threshold over the following months and potentially recommend that the City Council increase the threshold to distinguish truly exceptional donations over a higher threshold, or otherwise accept an abundance of donations at one time, while continuing to recognize and appreciate all donations and gifts to the City.

The combination of Carmel Gives and Carmel Cares is distinguishable because not only have they donated equipment and materials, but they have also contributed hundreds of labor hours and intend to keep this process going.

At this time, the City Council should accept their generous gift of replacing the broken roll-up window at the Forest Theater concession stand valued at \$7,304. Other items falling below the \$2,500 threshold which have also been donated to and accepted by the City, include:

- Donated electric-powered lawn mower
- Donated electric-powered hedge trimmer
- Donated electric-powered leaf blower
- Donated electric-powered back-pack leaf blower

- Donated gas weed whacker
- Constructed and installed free mini library shrine at Park Branch Library
- Constructed two magazine racks with copper roofs for south side of Ocean Ave.
- Constructed Comstock home enclosure around the backflow preventer assembly on San Carlos at Sunset Center
- Removed weeds and leaves around the entire block of the Sunset Center campus, and continue to maintain those areas
- Pressure-washed the Forest Theater seating area and applied two coats of high-quality stain on the wood benches
- Cleared drainage channel, lined channel with river stones, and weeded and mulched most areas inside and outside Forest Theater and on Mountain View
- Weeded entire length of Scenic Pathway from Eighth Avenue to Martin Way, including deep cleaning, removal of dead plants, and detailed plant trimming. This effort was led by volunteer Shirley Moon who has been immensely helpful to revitalize the pathway. Ms. Moon reports that many people have commented favorably about the improvements.
- Taking inventory of barriers, pathway borders, and plants for Scenic Pathway with intent to raise funds and execute replacing broken portions
- Supported City evaluation and repairs of irrigation system along Scenic Pathway
- Located and plotted all median islands, significant easements, and bump-outs (100+) into a GIS-compatible database

In addition, Carmel Cares and City staff are discussing additional potential projects including:

- Supplement City's public outreach campaign regarding recycling and composting including funding of an additional yellow bin at Sunset Center and implementing a Carmel Recycles Facebook page
- Purchase small, all-purpose vehicle with water tank to be shared by volunteer groups and City workers
- Purchase sidewalk cleaning machine
- Repair dilapidated boardwalk section built over a wet area in MTNP
- Repair small foot bridge at the Eleventh Avenue entrance to MTNP
- Re-cable the big oak tree at Devendorf Park
- Renovate turf and irrigation system for Devendorf Park
- Support and/or donate funds for North Dunes interpretive signage
- Provide recreational amenity at Forest Hill Park (pending Forest & Beach Commission)

FISCAL IMPACT:

City Donation and Gift Policy No. 2017-02 requires City Council acceptance of donations with a value over \$2,500. The cost to Carmel Cares for the roll-up window at the Forest Hill concession stand was \$7,034.

Carmel Cares has also donated an array of maintenance equipment, minor construction projects, and significant labor hours. All of these recent, and upcoming donations, are very much appreciated at this time when the City's revenue has been significantly impacted by the COVID-19 Pandemic.

Staff impacts to the Carmel Cares initiatives have been kept to a minimum or limited support of equipment and field labor. To keep all projects properly moving forward, all projects and decisions are reviewed at weekly videoconference meetings.

PRIOR CITY COUNCIL ACTION:

Council approved the City's Donation and Gift Policy No. 2017-02 on July 11, 2017 (Resolution 2019-079). There was no prior action regarding Carmel Cares.

ATTACHMENTS:

Attachment #1 - Resolution 2020-067, Accepting Donations from Carmel Cares

Attachment #2 - Donation and Gift Policy No. 2017-02

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-067

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
ACCEPTING DONATIONS FROM CARMEL CARES, A VOLUNTEER ORGANIZATION, AND
APPROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2020-2021 ADOPTED
BUDGET**

WHEREAS, the City of Carmel-by-the-Sea's budget for Fiscal Year 2020/21 is significantly reduced due to lower revenue projections resulting from the COVID-19 Pandemic; and

WHEREAS, a new, local volunteer group, known as "Carmel Cares," has teamed up with the non-profit organization "Carmel Gives," and is credited with the creation of unique, community engagement groups known as "Tree Tenders" and "Median Minders," all of which desire to help the City by maintaining and beautifying Carmel under the guidance of the City's Public Works Department; and

WHEREAS, the City's Donation and Gift Policy No. 2017-02 requires the City Council to accept donations of \$2,500 or more; and

WHEREAS, Carmel Cares has donated the full cost of \$7,304 to replace the broken roll-up window at the Forest Theater Concession Stand; and

WHEREAS, Carmel Cares and its partners have also donated landscape maintenance equipment to Public Works, constructed unique objects for the Village including a free mini library shrine and magazine racks for Ocean Avenue, and provided countless hours of labor to renovate landscaping areas, including around Sunset Center and along the Scenic Pathway; and

WHEREAS, Carmel Cares, Carmel Gives, Tree Tenders, and Median Minders intend to continue to provide these wonderful donations of which the City is greatly appreciative.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA DOES HEREBY:**

Accept the donation of \$7,304 to replace the broken roll-up window at the Forest Theater Concession Stand.

Approve a budget amendment to the Fiscal Year 2020-2021 Adopted Budget to recognize the donation of small tools and equipment and the Forest Theater roll-up window as shown in the attached Exhibit A.

Recognize and extend our sincere gratitude to all volunteer groups who have stepped up to help the City in so many ways during these difficult times.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 6th day of October, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

EXHIBIT A

General Ledger Account	Account Name	Purpose	FY 2020-21 Adopted/ Amended Budget	Adjustment Amount	FY 2020-21 Amended Budget
101-000-00-36621	General Fund Revenue Donations- Public Works	To recognize the donation of small tools, equipment, roll-up window	\$5,000.00	\$9,261.86	\$14,261.86
101-119-40-42106	General Fund Expenditures Public Works Small Tools & Equipment	Donated items of weed eater, two blowers, self-propelled mower, hedge trimmer	\$750.00	\$2,227.86	\$2,977.86
101-119-40-43002	General Fund Expenditures Public Works Capital Outlay Building Improvements	Donated item- roll up window for the Forest Theater	\$0	\$7,034.00	\$7,034.00

CITY OF CARMEL-BY-THE-SEA POLICY AND PROCEDURE

Subject: City Council Donation and Gift Policy	Policy/Procedure No: 2017-02
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Effective Date: 11 July 2017	Authority: Resolution No. 2017-079
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Purpose:

The purpose of this policy is to establish a formal process for the acceptance and documentation of donations made to the City in a responsible, transparent, and accountable manner.

Policy/Procedure:

As set forth fully in the policy document attached.

Responsible Party:

City Council

Department of Origin:

City Clerk

Revision Dates:**Rescinded Date:****City Administrator Approval:**

Signature

Date

City of Carmel-by-the-Sea

CITY COUNCIL

DONATION AND GIFT POLICY

Policy 2017-02

Office of the City Administrator
Carmel-by-the-Sea, CA 93921



GENERAL

INTRODUCTION

The City welcomes unrestricted donations as well as restricted donations that enhance City services, reduce costs that the City would incur in the absence of the donation, or that otherwise provide a benefit to the City. This policy is intended to establish uniform criteria and procedures guide the review and acceptance of such donations, confirm that the City has relevant and adequate resources to administer such donations, and ensure that the City appropriately acknowledges the generosity of the donor.

PURPOSE

The purpose of this policy is to establish a formal process for the acceptance and documentation of donations made to the City in a responsible, transparent, and accountable manner.

SPECIFIC OBJECTIVES

- To establish and guide relationships with donors who share the City's commitment to provide a high quality civic environment;
- To enrich our community by responsibly and efficiently managing donations; and
- To generate revenue to fund new and existing facilities, projects, programs and activities for the benefit of the City and its residents

DEFINITIONS

For the purposes of this Council policy:

Donation shall mean a monetary (cash) contribution, endowments, personal property, real property, financial securities, equipment, in-kind goods or services, or any other asset that the City has accepted and for which the donor has not received any good or services in return. For the purposes of this policy, the terms "donation" and "gift" shall be synonymous.

Donor shall mean an individual or legal entity that proposes or provides a donation to the City.

Donation Agreement shall mean an agreement between the City and the donor that details any restrictions on a donation as well as the respective obligations of the donor and the City.

Endowment shall mean donations that are restricted to the extent that only earnings, and not principal, may be used for a particular City department, location, or purpose.

Restricted donation shall mean donations designated at the request of the donor for a particular City department, location, or purpose.

Unrestricted donation shall mean a donation to the City without any limitations being placed upon its use.

This Council policy is intended to guide the manner in which City staff accepts donations on behalf of the City. Donations do not become the property of the City until accepted by the City consistent with this Council policy. Only the Council or City Administrator or his/her designee may accept donations. The City may decline any donation without comment or cause. All donations will be evaluated by the City prior to acceptance to determine whether the donation is in the City's best interest and is consistent with applicable City laws, policies, ordinances, and resolutions.

The City does not provide legal, accounting, tax or other such advice to donors. Each donor is ultimately responsible for ensuring the donor's proposed donation meets and furthers the donor's charitable, financial, estate planning goals.

The City must determine whether an expenditure of City funds, either a direct outlay of City funds or the use of City forces and materials, is associated with and or required by the acceptance of the donation prior to the acceptance. A donor may restrict a donation for a particular City department, location, or purpose, but not designate the City Official who may use the donation.

Potential costs and liabilities will be considered if a donation of personal property or of a service does not include the same indemnification, insurance, bonding, or warranties that the City would normally receive through procurement of personal property or services. Real property may be donated to the City provided that it will not expose the City to an unreasonable risk of litigation or liability, because of the physical condition of the property or existence of claims, liens, and encumbrances against the property.

Donations may not be used to implement new on-going programs or services, unless a permanent source of revenue is identified to support the program or service. The donation must be used for official City business, and not for political activities or other personal business.

If required, the City will report a donation made to the City to the Fair Political Practices Commission (FPPC) in accordance with the timelines and directives described in title 2, section 18944 of the California Code of Regulations. If a donation to the City is made at an elected City official's behest from a single source in a calendar year, and the donation meets or exceeds the amount established by the FPPC, the elected City official must file a FPPC Form 803 with the City Clerk disclosing this information.

The Council or City Administrator or his/her designee is responsible for acknowledging the receipt of donations and thanking, on behalf of the City, donors of donations. The City shall comply with all applicable laws and regulations of the Internal Revenue Service regarding the acceptance of donations.

PROCEDURES

ACCEPTANCE OF UNDESIGNATED DONATIONS OF CASH OR TANGIBLE ITEMS

All donations to the City shall immediately be submitted for consideration for acceptance. Based on the value of the donation offered as outlined below, appropriate City staff shall review donations and determine if the benefits to be derived warrant acceptance of the donation. The following points list the threshold amounts for donation acceptance.

- Offers of donations of cash or items valued at \$2,499 or below may be accepted by the City Administrator or his/her designee.
- Offers of donations of cash or items valued at \$2,500 or more must be accepted by the City Council.

Donations valued at more than \$10,000 shall be accepted through a written donation agreement consistent with these guidelines and approved by the City Council.

Based on the value of the donation offer as outlined above, appropriate City staff will review the conditions of any designated donation and determine if the benefits to be derived warrant acceptance of the donation. Criteria for the evaluation include but are not limited to:

- Consideration of an immediate or initial expenditure is required in order to accept the donation;
- The potential and extent of the City's obligation to maintain, match, or supplement the donation.

ACKNOWLEDGEMENT OF DONATIONS

A Donation Acceptance Form is required to be completed by the receiving Department Director or the City Administrator's Office for all donations provided to the City.

Acknowledgement of the donation should be in writing and be the responsibility of the Department Director who is the beneficiary of the donation. Undesignated donations shall be acknowledged by the City Administrator. A copy of the acknowledgement should be forwarded to donors.

The Donor Acceptance Form including the donor names and donation amounts are public information subject to disclosure pursuant to the California Public Records Act.

Recognition for significant donation to large capital campaigns considered on a case by case basis.

DECLINED DONATIONS

The City of Carmel-by-the-Sea reserves the right to decline any donation if, upon review, acceptance of the donation offer is determined in the sole discretion of the City to be not in the best interests of the City.

DISTRIBUTION OF DONATION

Tangible items with a value of less than \$2,500 will be distributed to appropriate City departments for use or, at the discretion of the Department Director or City Administrator, disposed of in an appropriate manner according to this policy.

Donations of cash for designated donations of less than \$2,500 will be deposited into the appropriate revenue and expenditure account for the designated City department.

Donations of cash for of \$2,500 or more require Council approval and will include a budget adjustment approved by Council recognizing the unanticipated revenue and appropriating the donation to the appropriate expenditure account, be it an existing capital project or department operating program.

DISSEMINATION OF INFORMATION

A copy of each Donation Acceptance Form for accepted donations shall be forwarded for information to the Finance Department and the designated department for which the donation was assigned, along with the corresponding authorizing resolution and budget adjustments as applicable.

Each original Donation Acceptance Form shall be maintained by the City Clerk's Office.



City of Carmel-by-the-Sea DONATION ACCEPTANCE FORM

Attachment 2

Name of Donor: _____

Address: _____ City: _____ State: _____ Zip: _____

Description of donation:

Donor estimate of current value: _____

Potential immediate or initial acquisition or installation cost, any on-going maintenance or replacement cost:

Intended use:

Conditions of acceptance or donor designation:

Remarks:

APPROVED / DISAPPROVED

Date

City Administrator Signature

Date Submitted to Council

Date Approved by Council

Date Mayor Signature

NOTE: The City of Carmel-by-the-Sea cannot guarantee future funding for repair, maintenance, use or replacement of donated items.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
CONSENT AGENDA**

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Sharon Friedrichsen - Director, Contracts and Budgets
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-068, declaring the City Council's intention to renew the Carmel Hospitality Improvement District and fixing the time and place of a public meeting and public hearing thereon and giving notice thereof

RECOMMENDATION:

Adopt Resolution 2020-068, declaring the City Council's intention to renew the Carmel Hospitality Improvement District and fixing the time and place of a public meeting and public hearing thereon and giving notice thereof.

BACKGROUND/SUMMARY:

The State of California Property and Business Improvement Law of 1994 ("1994 Law"), California Streets and Highways Code §36600 et seq. authorizes cities to establish business improvement districts for the purposes of promoting tourism. The Carmel Hospitality Improvement District (CHID) was formed under the 1994 Law. The CHID is an assessment district formed to provide specific benefits to payors by funding marketing and sales promotion efforts for assessed businesses.

Specifically, all lodging businesses within the City's boundary are considered to be the payors and receive the specific benefit of increased room night sales. The assessment rate is 1% of gross short-term (stays less than 31 days) room rental revenue. The assessment is collected by the City on a bi-monthly basis and remitted to Visit Carmel, which serves as the Owners' Association for the CHID as required by State law. Visit Carmel is responsible for managing the funds collected through the assessments and implementing programs in accordance with the Management District Plan ("Plan").

The CHID became effective on March 1, 2016 and has a 5-year term that expires on February 28, 2021. If the district expires due to term limits, a new Management District Plan may be created and the district may be renewed. Accordingly, Visit Carmel has prepared a new Plan, which is attached to this staff report, and includes the requirements as set forth under the Streets and Highways Code. Highlights of the Plan include:

1. Renewal term of 10 years effective 3/1/2021 through 2/28/2031.
2. Assessment rate set to 2% of gross short term room rental revenue, with the ability to raise the

assessment rate by no more than 0.5% in any year up to a maximum of 3%.

3. An anticipated annual budget of \$800,000 or \$8 million over the 10 year term.
4. An initial budget of \$560,000 (70%) for marketing, public relations and sales; \$144,000 (18%) for administration, \$88,000 (11%) for contingency/reserve and \$8,000 (1%) for collections for a total budget of \$800,000.
5. Revised definition of lodging businesses to exclude vacation rentals, time-share facilities and recreational vehicle parks from the assessment.

As outlined within California Streets and Highways Code §36600 et seq., the renewal of a district follows the same process as the formation of a new district. The first requirement in this process is the submission of a written petition signed by property or business owners who will pay more than 50% of the total amount of assessments proposed to be levied. City staff have reviewed the petitions received and calculated that a majority of owners, based upon the proposed assessment to be levied, have signed the petition supporting the CHID renewal. A copy of the petition is attached.

Next, Council would adopt a resolution of intention to renew the CHID, which is the subject of this agenda item. This resolution includes setting the date and time of November 3, 2020, at 4:30 p.m. for a public meeting to receive testimony on renewing the CHID and levying the assessments.

In addition, the resolution establishes the date and time of December 8, 2020, at 4:30 p.m. for a public hearing to receive the testimony of all interested persons for or against the renewal of the CHID and receipt by the City of oral or written protests from interested business owners to be assessed under the Plan. At the conclusion of that public hearing, Council may “adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments.” If there is no majority protest, Council may adopt a resolution to renew the CHID. However, if there are of record written or oral protests by owners of the lodging businesses within the CHID that will pay more than 50% of the estimated total assessment of the entire CHID, no further proceedings to renew the CHID shall occur for a period of one year.

FISCAL IMPACT:

In addition to the 10% transient occupancy tax collected by lodging establishments on behalf of the City, guests staying overnight within a lodging business within Carmel-by-the-Sea are assessed 1% of the gross room rental rate for the CHID and either \$1 or \$2 per night for the Monterey County Tourism Improvement District. Under the proposed renewal of the CHID, the assessment rate would increase to 2%, with the ability to raise the assessment rate by no more than .05% in any year up to a maximum of 3%.

The CHID assessment is collected by the City and then remitted to Visit Carmel so that Visit Carmel may provide marketing and other programs outlined within the Plan to the assessed businesses. The City will receive 1% to recover its cost of administering the assessment. Based upon the anticipated annual budget of \$800,000, the City's administration fee would be \$8,000 (1%). However, in order to ensure that the City is able to recoup its costs over the 10 year term, the City will receive a minimum of \$6,500 per year. The City's administrative fee will be evaluated annually and adjusted as needed.

PRIOR CITY COUNCIL ACTION:

Council previously initiated proceedings to form the CHID on November 3, 2015, which became effective March 1, 2016 and expires February 28, 2021.

ATTACHMENTS:

Attachment #1 - Resolution 2020-068 Intent to Renew CHID

Attachment #2 - Carmel_CHID Renewal_Management District Plan_FINAL

Attachment #3 - HID Renewal Petitions

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-068

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
DECLARING ITS INTENTION TO RENEW THE CARMEL HOSPITALITY IMPROVEMENT
DISTRICT (CHID) AND FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A
PUBLIC HEARING THEREON AND GIVING NOTICE THEREOF**

WHEREAS, the State of California Property and Business Improvement Law of 1994 ("1994 Law"), California Streets and Highways Code §36600 *et seq.* authorizes cities to establish business improvement districts for the purposes of promoting tourism; and

WHEREAS, the City Council initiated proceedings to establish the Carmel Hospitality Improvement District (CHID) under the 1994 Law on November 3, 2015; and

WHEREAS, the CHID became effective on March 1, 2016 and expires on February 28, 2021; and

WHEREAS, the CHID may be renewed in accordance with Streets and Highways Code §36630; and

WHEREAS, Visit Carmel has prepared a Management District Plan in accordance with Streets and Highways Code §36622 that proposes to renew the CHID for a ten-year term effective March 1, 2021; and

WHEREAS, the City Council may initiate proceedings to renew a district upon the submission of a written petition signed by property or business owners who will pay more than 50% of the total amount of assessments proposed to be levied; and

WHEREAS, the City Council has received such a written petition that was prepared in accordance with Streets and Highways Code §36621.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA DOES HEREBY:**

1. Finds the recitals set forth herein are true and correct.
2. Finds that lodging businesses that will pay more than fifty percent (50%) of the assessment proposed in the Management District Plan have signed and submitted a petition in support of the renewal of the CHID. The City Council accepts the petition and adopts this Resolution of Intention to Renew the Carmel Hospitality Improvement District and to levy an assessment on certain lodging businesses within the CHID boundaries in accordance with the Property and Business Improvement Law of 1994.
3. Finds that the Management District Plan satisfies all requirements of the Streets and Highways Code §36622.
4. Declares its intention to renew the CHID and to levy and collect assessments on lodging businesses within the CHID boundaries in accordance with the Property and Business Improvement Law of 1994.

5. The CHID shall include all lodging businesses located within the boundaries of the City of Carmel-by-the-Sea, as shown in the map attached as Exhibit A.
6. The annual assessment rate is two percent (2%) of gross short term (stays less than thirty one days) room rental revenue, with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any year up to a maximum of three percent (3%). Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days nor on stays by any Federal or State of California officer or employee when on official business nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
7. The assessments levied by the CHID shall be applied toward sales promotion and marketing programs to market assessed lodging businesses in Carmel-by-the-Sea as tourist, meeting and event destinations, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which CHID assessments are levied as long as the funds are used consistent with the requirements of this resolution and the Management District Plan.
8. The CHID will be renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031.
9. Bonds will not be issued.
10. The public meeting to hear testimony on renewing the CHID and levying assessments is set for November 3, 2020 at 4:30 p.m. or as soon thereafter as the matter may be heard at the Council Chambers located at City Hall on the Eastside of Monte Verde between Ocean and Seventh Avenues, Carmel-by-the-Sea, CA, 93921. If local or state health orders are still in effect, then this public meeting may be conducted via teleconferencing, consistent with those local and state health orders.
11. The public hearing to receive oral or written protests from interested business owners to be assessed under the Plan and to thereafter consider the renewal of the CHID and the levy of assessments is set for December 8, 2020 at 4:30 p.m. or as soon thereafter as the matter may be heard at the Council Chambers located at City Hall on the Eastside of Monte Verde between Ocean and Seventh Avenues, Carmel-by-the-Sea, CA, 93921. If local or state health orders are still in effect, then this public hearing may be conducted via teleconferencing, consistent with those local and state health orders.
12. The City Clerk is directed to provide written notice to the lodging businesses subject to the assessment of the date and time of the public meeting and the public hearing and to provide notice, as required by Streets and Highways Code §36623(b), no later than October 7, 2020.
13. At the public meeting and public hearing, the testimony of all interested persons for or against the assessment or renewal of the CHID may be received. If, at the conclusion of the public hearing, there are of record written or oral protests by owners of the lodging businesses within the proposed CHID that will pay more than fifty percent (50%) of the estimated total assessment of the entire CHID, no further proceedings to renew the CHID shall occur for a period of one year.
14. The complete Management District Plan is on file with the City Clerk and may be reviewed upon request.
15. This resolution shall take effect immediately upon its adoption by Council.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 6th day of October, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

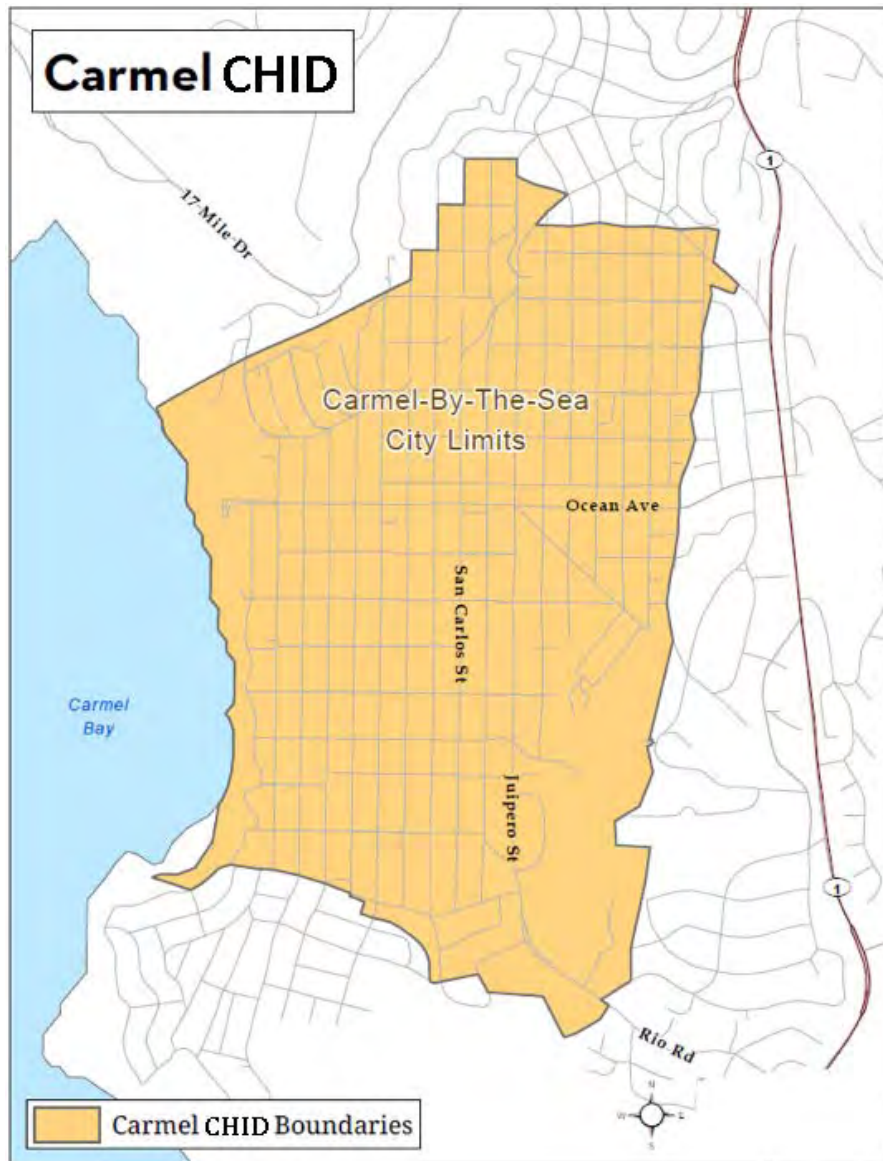
APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

EXHIBIT A
District Boundaries





CARMEL HOSPITALITY IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

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I. OVERVIEW

Developed by the City of Carmel-by-the-Sea, Visit Carmel, and Carmel lodging businesses, the Carmel Hospitality Improvement District (CHID) is an assessment district formed to provide targeted marketing to specifically benefit assessed businesses. This approach has been used successfully for the past five years in Carmel-by-the-Sea pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The CHID is proposed to be renewed for ten (10) years as allowed by the PBID Law and this Management District Plan (Plan) sets forth the services to be provided and budget of the CHID, assessments to be levied to fund the CHID, special benefits provided to the assessed businesses, and implementation and governance of the CHID.

- Location:* The CHID includes all lodging businesses within the City boundaries of the City of Carmel-by-the-Sea, as shown on the map in Section IV Boundary.
- Services:* The CHID is designed to provide specific benefits directly to payors through targeted marketing services designed to increase overnight tourism and associated room sales and revenue therefrom for assessed businesses, with particular concentration on increasing overnight sales during lower visitation periods.
- Budget:* The total CHID annual budget for the *initial* year of its ten (10)-year renewed term is anticipated to be approximately \$800,000. This budget is expected to fluctuate as occupancy rates stabilize and room rates vary.
- Cost:* The annual assessment rate shall be two percent (2%) of gross room rental revenue on short term stays (less than 31 days), with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any one year up to a maximum of three percent (3%), as specified in Section VII. Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
- Collection:* The City will be responsible for collecting the assessment on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the CHID.
- Duration:* The CHID will be renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031. Once per year, beginning on March 1, 2022, there is a 30-day period in which owners of assessed businesses paying more than fifty percent (50%) of the assessment may protest and initiate a City Council hearing on CHID termination.
- Management:* Visit Carmel will continue to serve as the CHID's Owners' Association and must provide annual reports to the City Council. The Visit Carmel Board of Directors, comprised of a minimum of six (6) business owners or their representatives paying the CHID assessment, will be responsible for managing funds and implementing programs in accordance with this Plan.

II. BACKGROUND

Property and Business Improvement Districts (PBIDs) utilize the efficiencies of private sector operation in the market-based promotion of business districts. PBIDs allow business owners to organize their efforts to increase sales and promotional efforts. Business owners within the district fund a PBID, and those funds are used to provide services that the businesses desire and benefit the businesses within the district.

Property and Business Improvement District services may include, but are not limited to:

- Marketing of the District
- Business Promotion Activities
- Infrastructure Improvements

In California, PBIDs are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The PBID Law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. *The key difference between PBIDs and other special benefit assessment districts is that funds raised are managed by the private non-profit corporation governing the district.*

There are many benefits to Business Improvement Districts:

- Funds cannot be diverted for other government programs;
- Services are customized to fit the needs of each district;
- They allow for a wide range of services, including those listed above;
- Property and Business Improvement Districts are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable funding source for business promotion.

The PBID Law is provided in Appendix 1 of this document.

III. EXISTING CHID AND RENEWAL

The existing CHID was implemented on March 1, 2016 with a five (5) year term and expires on February 28, 2021. It provides for a 1% assessment rate on gross room rental revenue per overnight stay. This Plan renewal proposes a 2% assessment rate, with the ability to increase the assessment rate to 3%, for a ten (10)-year term expiring February 28, 2031.

There are several specific reasons why the CHID renewal is crucial at this time:

A. The Need to Increase Occupancy

Occupancy rates for Carmel-by-the-Sea hotels during the March/April 2020 bi-monthly period were reported at 15%, as compared to 65% during the same period of 2019. The May-June 2020 reporting period is likely to show similarly dismal numbers as all leisure travel was essentially closed during May and half of June.

The catastrophic impact the Covid-19 pandemic has had on decreased tourism in Carmel-by-the-Sea, the state of California, and throughout the country¹, as well as the predicted slow recovery rate of both the economy and individual mindsets toward travel², supports the strong need to secure a stable, self-generating marketing fund that will be vital for Carmel-by-the-Sea to compete for visitation.

Even as leisure travel has opened, the regular visitation patterns of year's past will continue to be severely disrupted. While there are indications of pent up desire for travel, the situation continues to be tenuous. The virus continues to spread, outbreaks are likely, shutdowns may occur and reoccur, and the economy is unstable. In addition, the lack of any international visitation for the indefinite future will negatively impact the mid-week and off-season months.

Visit Carmel's marketing programs must be thoughtful and strategic. With the goal of supporting the lodging businesses but not at the expense of the health of the destination and the community.

B. An Opportunity to Increase City Tax Revenue

As with many communities around the country, the pandemic has decimated the City's budget, due to the plunge in hotel, restaurant, and retail sales. But with Carmel's interdependence on tourism as its main economic driver, the Village is more severely impacted than a typical small city. Indeed, the City's projected 2020-21 budget indicates projected revenue of about \$18.6 million, a 33% decrease from the previous year.

With the assessment funds generated and the focus on marketing to increase overnight visitation, so too will the City's TOT and sales tax revenue benefit.

¹Total travel spending in the U.S. is predicted to drop 45% by the end of this year. International inbound spending is expected to fall 75%. FULL FORECAST: https://www.ustravel.org/system/files/media_root/document/Research_Travel-Forecast_Summary-Table.pdf

²Since the beginning of March, the COVID-19 pandemic has resulted in nearly \$237 billion in losses for the U.S. travel economy. Tourism spending in California is expected to drop to \$75.4 billion in 2020, about half of the 2019 total, erasing a decade of growth. RECAP: https://www.ustravel.org/sites/default/files/media_root/document/Coronavirus_WeeklyImpacts_06.18.20.pdf and <https://industry.visitcalifornia.com/marketing-communications/coronavirus>

C. Stable Funding for Hospitality and Tourism Promotion

The renewal of the CHID will continue to provide a stable source of funding for consistent hospitality and tourism promotion efforts, free of the political and economic circumstances that can complicate funding for promotion of the hospitality and tourism industry.

D. The Need to Educate the Visitor on Responsible Travel

We are only in the initial stages of allowing leisure travel back to Carmel-by-the-Sea, post-Covid. However, it already has become clear that the way to travel safely and responsibly will be different than ever before. Increased demands on both the visitors and the hospitality community will require vigilance, creativity, flexibility, and an ongoing education on protocols. CHID funds will also be used to create and disseminate the messaging we need in order to keep our hospitality and tourism economy thriving and the health of our community safe.

E. Better Able to Compete

Finally, as Carmel-by-the-Sea begins the long road to recovery, we will be competing with destinations throughout the state—many vying for the attention of a similar demographic and geographic profile. The hospitality and tourism industry is a sophisticated, competitive industry in California with cities and counties vying for visitor business. Visit Carmel compares* to other California destination marketing organizations, also known as Tourism Improvement Districts (TID), as follows:

District	Annual Budget*	Assessment Rates	Other Guest Levies
Sonoma County	\$4,700,000	2%	12%
Newport Beach	\$4,500,000	3%	10%
SLO County TMD ³	\$4,488,000	1.5% (up from 1% on 7/1)	13%
Monterey County	\$4,307,000	\$1 - \$2.50/night	10%
Santa Barbara	\$3,767,000	\$0.50-\$2.00/ night	11%
SLO (Unincorporated)	\$3,724,000	2%	10%
South Lake Tahoe	\$2,680,000	\$3.00 - \$4.50/night	12%
San Luis Obispo (City)	\$1,867,000	2%	12%
Pismo Beach	\$1,750,000	1%	12%
Paso Robles	\$1,200,000	2%	12%
Laguna Beach	\$950,000	2%	12%
Morro Bay	\$835,000	3%	12%
Carmel (proposed)	\$800,000	2%	10%
Sonoma City	\$730,000	3%	10%
Truckee	\$656,400	2%	10%
Healdsburg	\$580,000	2%	12%

*Source: Civitas TID grid, Oct. 2019. (Annual budget not updated for post-Covid impact, except "Carmel Proposed")
<https://www.civitasadvisors.com/wp-content/uploads/2019/10/Global-TID-Matrix-10-14-2019.pdf>

³ SLO TMD Annual Report: [https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/slocal/VSC AnnualReport 18 19 WEB_afc3c97a-a626-41a2-a55e-64f837310815.pdf](https://assets.simpleviewinc.com/simpleview/image/upload/v1/clients/slocal/VSC%20AnnualReport%2018%2019%20WEB_afc3c97a-a626-41a2-a55e-64f837310815.pdf)

IV. BOUNDARY

The CHID will include all lodging businesses, existing and in the future, available for public occupancy within the city limits and as depicted by the boundaries shown on the map below.

Lodging business means: any building, portion of any building, or group of buildings in which there are guest rooms or suites, including housekeeping units for transient guests, where lodging with or without meals is provided. Lodging business does not include:

- Vacation time-share facilities;
- Vacation rentals, defined as a single family home, townhome, or condominium that is available for rent; and
- Recreational vehicle (RV) parks.

The boundary, as shown in the map below, currently includes 44 lodging businesses. A complete listing of the lodging businesses within the proposed CHID can be found in Appendix 2.



V. SERVICES

Assessment funds will be spent on specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost of conferring the benefits or granting the privileges. The privileges and services provided with the CHID funds are activities and improvements, available only to assessed businesses, designed to increase overnight stays and revenue therefrom.

A. Integrated Marketing Program

An integrated strategic marketing program will promote assessed lodging businesses. The marketing program will account for approximately 70% of the budget and have a central theme of promoting Carmel-by-the-Sea as a desirable place for visitors. However, the program will have the over-arching goal of increasing guests and sales at assessed businesses and may include the following activities:

- Internet marketing efforts, including the use of social media, to increase awareness and optimize internet presence to drive customers and sales to assessed businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive customers and sales to assessed businesses;
- Public relations campaigns to increase awareness and brand image using earned media coverage, including familiarization tours for media and influencers and expenses incurred therein;
- Attendance at media events and/or trade shows to promote assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance at professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract customers to assessed businesses;
- Development and maintenance of a website designed to promote assessed businesses; and
- Outside agency or independent contractor fees for providing marketing services.

B. Administration

The administration portion of the budget will account for approximately 18% of the budget and utilized for administrative staffing costs, office costs, advocacy and other general administrative costs such as insurance, legal, and accounting fees.

C. Contingency/Reserve

A prudent portion of the budget, approximately 11%, will be allocated to a contingency fund, to account for lower than anticipated collections or a predicted need for cash flow stabilization. Contingency funds may be held in a reserve fund or utilized for other programs or services authorized by the PBID Law, administration or renewal costs at the discretion of the Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the Board. The reserve fund may be used for the costs of renewing the CHID.

D. City Collection Fee

The City shall retain a fee equal to one percent (1%) of the amount of assessment collected, and not to be less than \$6,500 collected during each one-year period, to cover its costs of collection and administration. The minimum fee amount will be evaluated annually and adjusted as needed to ensure city's administrative costs remain covered.

VI. BUDGET

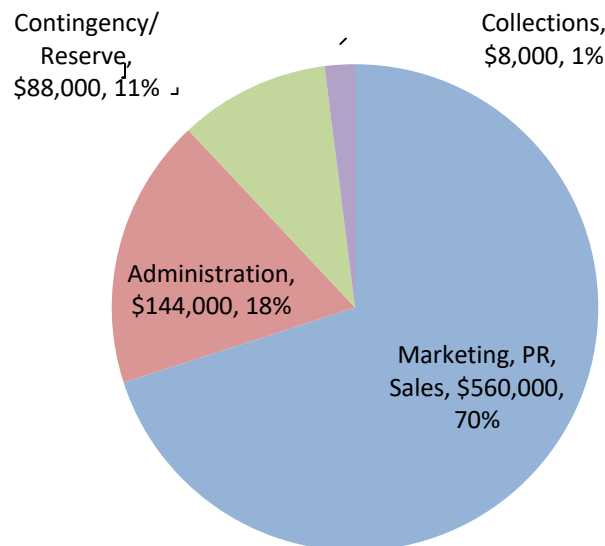
A. Annual Budget

The total ten (10) year budget, based on the two percent (2%) rate of assessment, is projected at approximately \$800,000 for the initial year, or \$8,000,000 total through February 28, 2031. This budget is expected to fluctuate as businesses open and close and room occupancy and rates change, but is not expected to significantly change over the life of the CHID. Should the assessment rate be increased to three percent (3%) as provided by Section VII below, the annual budget could be increased up to approximately \$1,200,000, subject to the fluctuations noted.

B. Budget Allocations

The budget allocations for the initial year are shown below. Although actual annual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain consistent. However, the Visit Carmel Board of Directors shall have the authority to adjust categorical allocations by up to fifteen percent (15%) of the total budget each year. In the event of a legal challenge against the CHID, any and all assessment funds may be used for the costs of defending the CHID, the City, and Visit Carmel related to the CHID.

The initial annual budget of \$800,000 will be allocated as follows:



C. GAAP Compliance

Each budget category includes all costs related to providing that activity or improvement, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the Marketing, Public Relations, Sales & Promotion budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of employing an individual staff member may be allocated to multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the activities and improvements below will be determined by the CHID Management Committee on an as-needed basis and detailed (number of employees and cost of salaries and benefits) in the annual report to the City.

VII. ASSESSMENT

A. Assessment

The annual assessment rate is two percent (2%) of gross room rental revenue on short term stays (less than 31 days). Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

The term “gross room rental revenue” as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business 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. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

During the ten (10) year term, the assessment rate may be increased by the CHID/Visit Carmel Board to a maximum of three percent (3%) of gross lodging revenue. The maximum assessment increase in any year shall be one-half of one percent (0.50%) of gross room rental revenue. In any case, the annual assessment cannot exceed the actual costs to operate the District in any given year.

The assessment is levied upon and is a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall be disclosed as the “CHID Assessment.” The assessment is imposed solely upon and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds shall not be issued.

B. Penalties and Interest

The City shall be responsible for collection of delinquent assessments. The City of Carmel-by-the-Sea shall retain any penalties or interest collected with unpaid assessments as its fee for collecting the delinquent assessments. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any assessed business which fails to remit payment of assessments within fourteen (14) days of the due date shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* If an assessed business fails to remit any delinquent remittance within sixty (60) days following the date on which the remittance first became delinquent, it shall pay a second delinquency penalty of ten (10%) percent of the amount of the assessment in addition to the amount of the assessment and the ten (10%) percent penalty first imposed.
3. If the City determines than an assessed business is delinquent, the assessed business can be sent directly to collections without further review and the assessed business will be responsible for all late fees, interest, and collection fees.

4. *Fraud:* If it is determined that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above.
5. *Interest:* In addition to penalties imposed, any assessed business which fails to remit any assessment shall pay simple interest at the rate of six percent (6%) per year or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent until paid.
6. *Penalties Merged With Assessment:* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid.

C. Time and Manner for Collecting Assessments

Visit Carmel shall be responsible for educating new and existing businesses in the CHID of its existence. The City shall make its best efforts to notify Visit Carmel when a business closes, opens or changes ownership within the CHID. The CHID assessment provided for under this Plan will be implemented beginning March 1, 2021 and will continue for ten (10) years through February 28, 2031. The City will be responsible for collecting the assessment on the gross room rental revenue on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each business.

The City's cost of pursuing and collecting delinquent assessments shall be paid from the penalties and interest charged on delinquent assessments or the contingency portion of the budget. If the penalties and interest do not cover the City's cost, or if any portion of penalties and interest are waived in the action to collect the delinquent assessment, the City shall be reimbursed for its costs from the contingency portion of the budget. If the City pursues delinquent Transient Occupancy Tax and delinquent CHID assessment in the same action, only the proportionate cost of collecting the assessment may be retained by the City from the assessment penalties and interest collected or charged to the contingency portion of the budget.

The City shall forward the assessments collected to Visit Carmel within 30 days from collection.

VIII. CALIFORNIA CONSTITUTIONAL COMPLIANCE

The CHID is subject to certain provisions of the California Constitution. Although it levies an assessment, the CHID is not a property-based assessment subject to the requirements of Article XIII D of the Constitution (“Proposition 218”). The Court has found, “Proposition 218 limited the term ‘assessments’ to levies on real property.”¹ Rather, the CHID assessment is a business-based assessment, and is subject to Article XIII C of the Constitution (“Proposition 26”). Pursuant to Proposition 26 all City levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the CHID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

A. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed lodging businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific lodging businesses within the CHID. The activities described in this Plan are specifically targeted to increase overnight stays for assessed lodging businesses within the boundaries of the CHID, and are and shall be narrowly tailored. CHID funds will be used exclusively to provide the specific benefit of increased overnight stays directly to the assesseees. Assessment funds shall not be used to feature non-assessed lodging businesses in CHID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by the CHID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in gross overnight stays and revenue therefrom. The specific benefit of an increase in gross overnight stays for assessed lodging businesses will be directly provided only to lodging businesses paying the CHID assessment, with sales and marketing programs promoting only those businesses paying the assessment. The CHID programs will be designed to increase gross overnight stays at each assessed lodging business. Because they are necessary to provide the CHID programs that specifically benefit the assessed lodging businesses, the administration, and contingency/reserve, and collections expenditures also provide the specific benefit of increased gross room sales to the assessed lodging businesses.

Although the CHID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific benefit to the payer.”³

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

³ Government Code § 53758(a)

B. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing services like those to be provided by the CHID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific government service to the payer.”⁶

C. Reasonable Cost

CHID activities and improvements will be implemented carefully to ensure they do not exceed the reasonable cost to the City of such activities and improvements. The full amount assessed will be used to provide the activities and improvements described herein. Funds will be managed by the Visit Carmel Board of Directors, and reports submitted on an annual basis to the City. Only assessed lodging businesses will directly benefit from other CHID-funded services. Non-assessed lodging businesses will not directly receive these, nor any other, CHID-funded services and benefits.

The CHID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room sales revenue, that portion of the promotion or program generating that gross revenue shall be paid with non-CHID funds. CHID funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room sales for non-assessed businesses.

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

IX. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the CHID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Carmel will serve as the Owners' Association for the CHID. Visit Carmel will maintain its Board of Directors, comprised of a minimum of six (6) business owners, or their representatives, paying the CHID assessment, which will be responsible for implementing this Plan. Visit Carmel shall be responsible for managing funds and implementing programs in accordance with this Plan and by direction of the Board of Directors and must provide annual reports to the City Council.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Visit Carmel Board, the Carmel Restaurant Management Committee, and certain committees wherein the CHID is discussed must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

Visit Carmel shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report may be incorporated into other City-related Annual Reports (such as the Carmel Restaurant Improvement District), may be presented at the end of the 1st quarter of the current fiscal year, and shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for the next fiscal year.
- An estimate of the cost of providing the improvements and the activities for that upcoming fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements,

maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. "Assessment"

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall

comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. "Property"

"Property" means real property situated within a district.

36614.5. "Property and business improvement district"; "District"

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

36614.6. "Property-based assessment"

"Property-based assessment" means any assessment made pursuant to this part upon real property.

36614.7. "Property-based district"

"Property-based district" means any district in which a city levies a property-based assessment.

36615. "Property owner"; "Business owner"; "Owner"

"Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. "Special benefit"

"Special benefit" means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. "Tenant"

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts

established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category

of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public

hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesseees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners

or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Adobe Inn	Forest Lodge
Best Western Town House Inn	Hofsas House
Briarwood Inn	Horizon Inn
Candlelight Inn	Hotel Carmel
Carmel Bay View Inn	Lamplighter Inn
Carmel Cottage Inn	La Playa Hotel Carmel
Carmel Country Inn	L'Auberge
Carmel Fireplace Inn	Lobos Lodge
Carmel Garden Inn	Monte Verde Inn
Carmel Green Lantern Inn	Normandy Inn
Carmel Inn & Suites	Ocean View Lodge
Carmel Lodge	Pine Inn
Carmel Oaks	Seaview Inn
Carmel Resort Inn	Svendsgaards Inn
Carmel Stonehouse Inn	Tally Ho
Carriage House	Tradewinds Inn
Casa de Carmel	The Getaway
Coachman's Inn	The Hideaway
Colonial Terrace Inn	The Homestead
Comfort Inn	Vagabonds House
Cypress Inn	Wayfarer
Edgemere Cottages	Wayside Inn

**PETITION TO THE CITY OF CARMEL-BY-THE-SEA
TO RENEW THE CARMEL HOSPITALITY
IMPROVEMENT DISTRICT**

We petition you to initiate proceedings to renew the Carmel Hospitality Improvement District (CHID) in accordance with the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq., for the purpose of providing services as described in the summary of the Management District Plan attached hereto as Exhibit A.

Business NameBusiness Owner*Adobe Inn**Sergio Javier*

Owner Representative/Owner Name (printed)

GM

Title

Owner/Representative Signature

9.17.2020

Date

A complete copy of the Management District Plan will be furnished upon request. Requests for a complete copy of the Management District Plan should be made to:

Amy Herzog, Executive Director
Visit Carmel
P.O. Box 3921
Carmel, CA 93921
amy.herzog@carmelcalifornia.com

Please return this signed petition to the above email or mailing address no later than Fri., Sept. 18, 2020.

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Business Name

Business Owner

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

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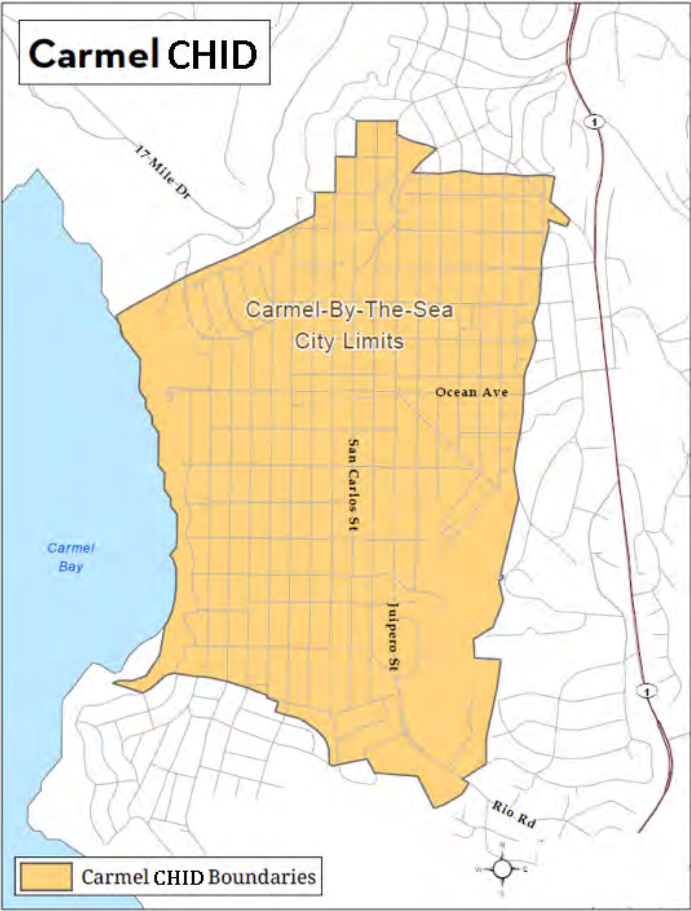
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EXHIBIT A**MANAGEMENT DISTRICT PLAN SUMMARY**

- Location:** The CHID includes all lodging businesses within the City boundaries of the City of Carmel-by-the-Sea, as shown on the Boundary Map attached hereto.
- Services:** The CHID is designed to provide specific benefits directly to payors through targeted marketing services designed to increase overnight tourism and associated room sales and revenue therefrom for assessed businesses, with particular concentration on increasing overnight sales during lower visitation periods.
- Budget:** The total CHID annual budget for the *initial* year of its ten (10)-year renewed term is anticipated to be approximately \$800,000. This budget is expected to fluctuate as occupancy rates stabilize and room rates vary.
- Cost:** The annual assessment rate shall be two percent (2%) of gross room rental revenue on short term stays (less than 31 days), with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any one year up to a maximum of three percent (3%) in accordance with the procedures set forth in the Management District Plan. Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
- Collection:** The City will be responsible for collecting the assessment on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the CHID.
- Duration:** The CHID will be renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031. Once per year, beginning on March 1, 2022, there is a 30-day period in which owners paying more than fifty percent (50%) of the assessment may protest and initiate a City Council hearing on CHID termination.
- Management:** Visit Carmel will continue to serve as the CHID's Owners' Association and must provide annual reports to the City Council. The Visit Carmel Board of Directors, comprised of a minimum of six (6) business owners or their representatives paying the CHID assessment, will be responsible for managing funds and implementing programs in accordance with this Plan.

EXHIBIT A
MANAGEMENT DISTRICT PLAN SUMMARY

Boundary Map



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Business Name

Business Owner

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

Date

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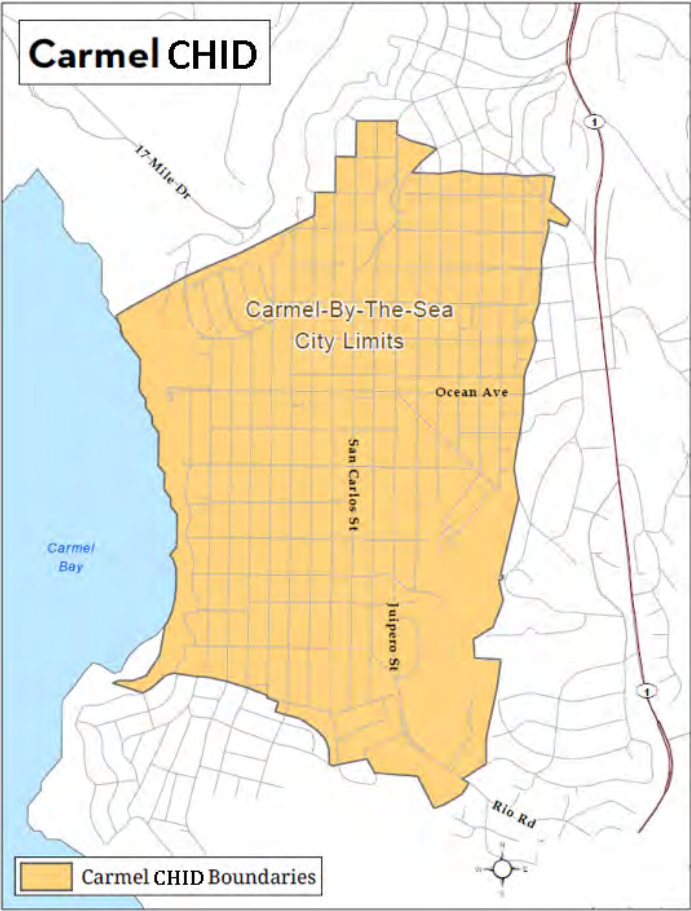
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Business NameBusiness OwnerCoachman's InnGordon & Sandy
SteuckOwner Representative/Owner Name (printed)Hgr.
TitleOwner/Representative SignatureDate

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Business NameBusiness OwnerCarmel Country InnChris TescherCarmel StonehaseChris Tescher

Owner Representative/Owner Name (printed)

Title

OWNER

Owner/Representative Signature

Date

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Business NameBusiness OwnerColonial TerraceEsperanza Carmel LLCAmber CyranG.M.

Owner Representative/Owner Name (printed)

Title

Owner/representative signature09.25.2020

Date

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Business Name

Business Owner

CARMEL FIREPLACE INN

CLYDE STURGES

BRIARWOOD INN

CLYDE STURGES

CLYDE STURGES

Owner Representative/Owner Name (printed)

PRESIDENT

Title

Owner/Representative Signature

Sept 14, 2020
Date

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Business NameBusiness Owner

BEST WESTERN CARMEL TOWNHOUSE
COMFORT INN CARMEL-by-the-sea

NIJAM PATEL
NIJAM PATEL

JO DESAI / NIJAM PATEL
Owner Representative/Owner Name (printed)

HOTEL OPERATIONS
Title

Owner/Representative

9/21/20
Date

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TO RENEW THE CARMEL HOSPITALITY
IMPROVEMENT DISTRICT**

We petition you to initiate proceedings to renew the Carmel Hospitality Improvement District (CHID) in accordance with the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq., for the purpose of providing services as described in the summary of the Management District Plan attached hereto as Exhibit A.

Business NameBusiness Owner

CYPRESS INN

DANNY LEVETI

FOREST LODGE

DANNY LEVETI

LAMPLIGHTER INN

DANNY LEVETI

PETER RADLER

GM

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

9/15/2020
Date

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Amy Herzog, Executive Director
Visit Carmel
P.O. Box 3921
Carmel, CA 93921
amy.herzog@carmelcalifornia.com

Please return this signed petition to the above email or mailing address no later than Fri., Sept. 18, 2020.

**PETITION TO THE CITY OF CARMEL-BY-THE-SEA
TO RENEW THE CARMEL HOSPITALITY
IMPROVEMENT DISTRICT**

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Business Name**Business Owner**

Sattva Investors LP

Amrish G Patel

General Partner

Owner Representative/Owner Name (printed)

Title

25th Sep, 2020

Owner/Representative Signature

Date

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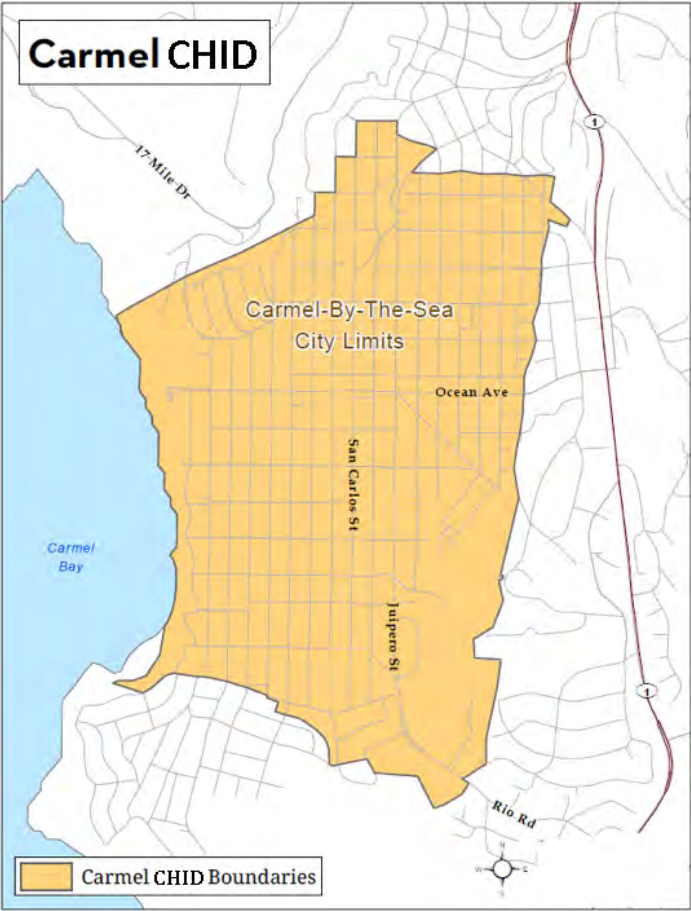
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EXHIBIT A**MANAGEMENT DISTRICT PLAN SUMMARY**

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- Budget:** The total CHID annual budget for the *initial* year of its ten (10)-year renewed term is anticipated to be approximately \$800,000. This budget is expected to fluctuate as occupancy rates stabilize and room rates vary.
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Business Name

Business Owner

Horizon Inn/Ocean View Lodge

James and Pamela Sheppard

Pamela Sheppard

Owner

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

9/29/2020

Date

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Business Name

Business Owner

Hofsas House Hotel

Hofsas House, Inc.

Carrie Theis

Co-Owner/GM

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

9/10/2020

Date

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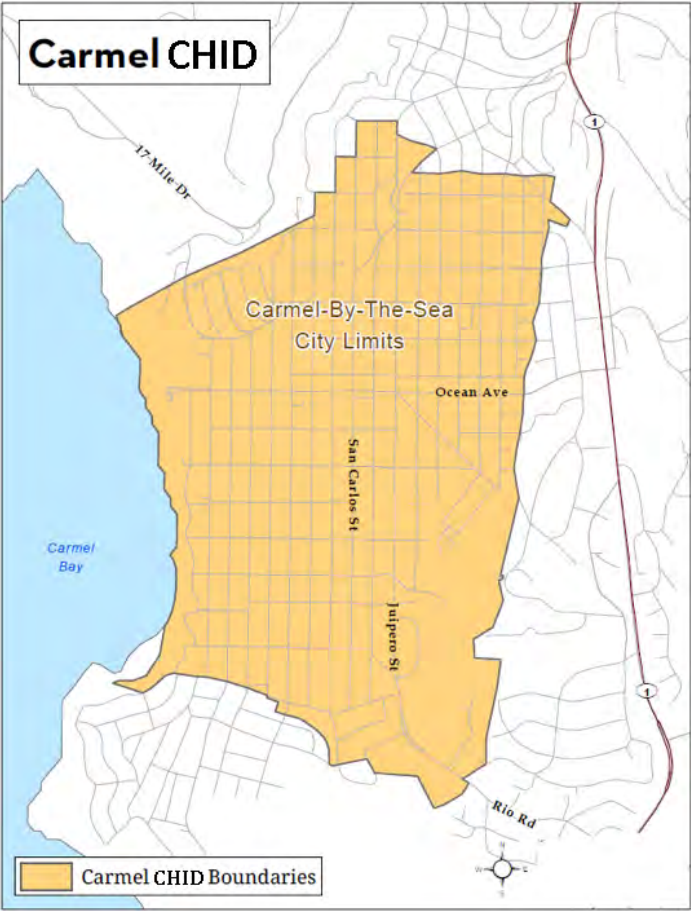
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- Cost:** The annual assessment rate shall be two percent (2%) of gross room rental revenue on short term stays (less than 31 days), with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any one year up to a maximum of three percent (3%) in accordance with the procedures set forth in the Management District Plan. Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
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Title

Owner/Representative Signature

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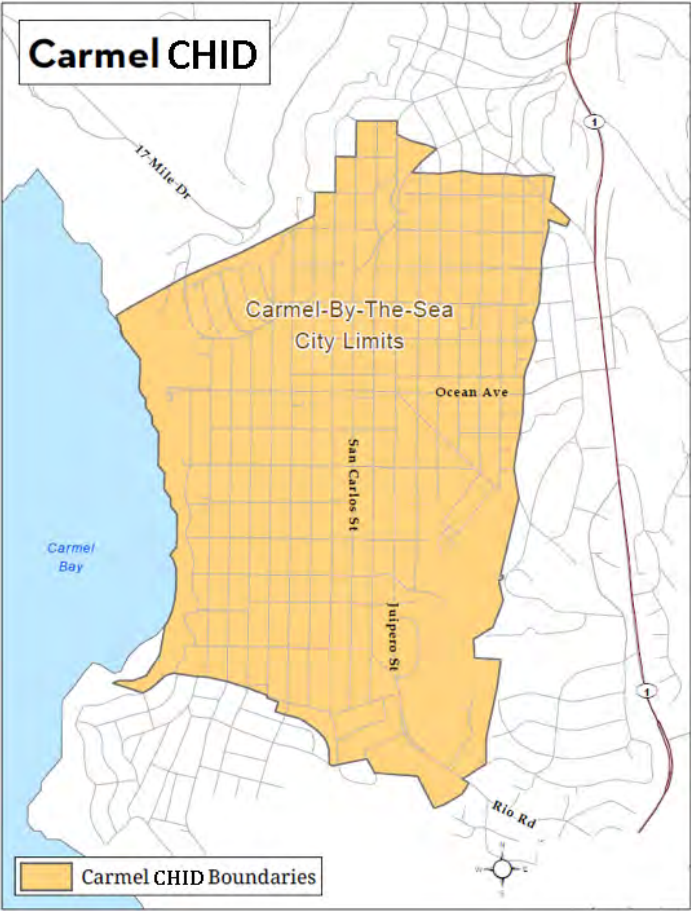
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Business NameBusiness Owner

Pine Inn
Tully Ho Inn

Richard V. Gonna
Richard V. Gonna

John Lloyd for Richard V. Gonna Co-As.
Owner Representative/Owner Name (printed) Title

9/9/20
Date

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Title

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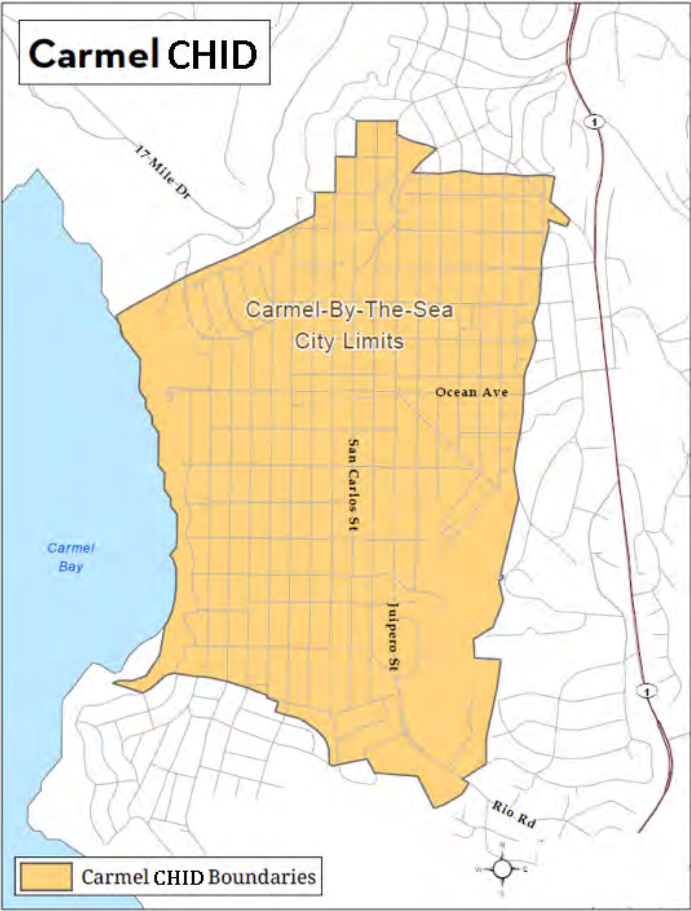
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Business Owner

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Title

Owner/Representative Signature

Date

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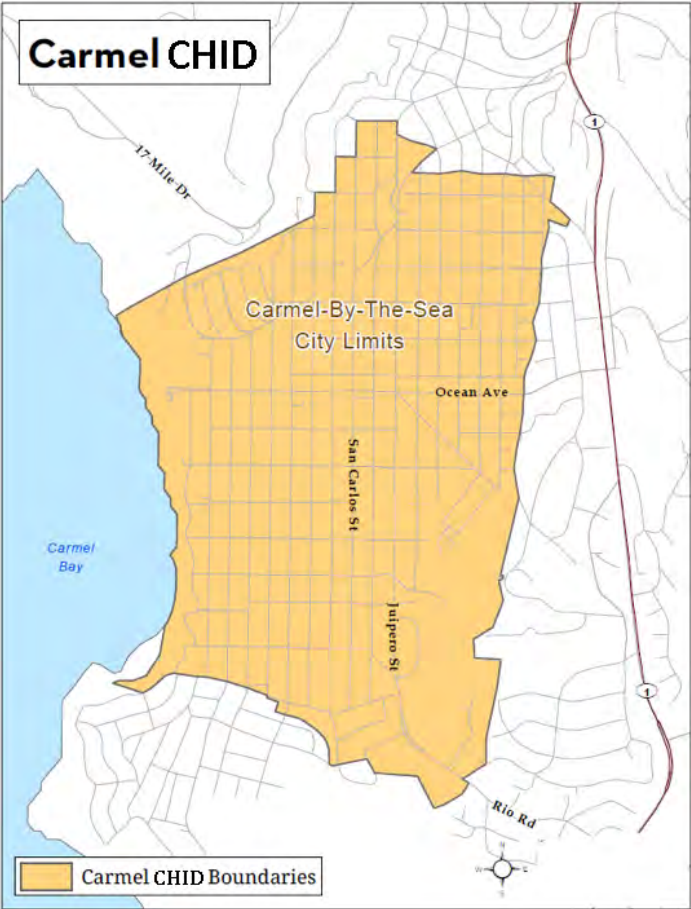
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Business Name**Business Owner**

Carmel Lodge
Trabesando Carmel

Stilwell, Inc.
Stilwell, Inc.

Candace Fecteau
Owner Representative/Owner Name (printed)

General Manager
Title

Owner/Representative Signature

9/16/20
Date

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Business Name

Business Owner

The Vagabond's House

Amanda Levett

Thomas Rogers

GM

Owner Representative/Owner Name (printed)

Title

Owner/Representative Signature

9.23.20

Date

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CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Marnie Waffle, AiCP – Acting Community Development Planning & Building Director

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-069, authorizing application for, and receipt of, State of California Regional Early Action Program (REAP) Planning Grant Program funds

RECOMMENDATION:

Adopt Resolution 2020-069, authorizing application for, and receipt of, State of California Regional Early Action Program (REAP) Planning Grant Program funds.

BACKGROUND/SUMMARY:

The Regional Early Action Planning Grants Program (REAP) is part of the broader Program formerly known as the Local Government Planning Support Grants Program, which was established as part of the 2019-20 Budget Act. The 2019-20 Budget Act provides a spectrum of support, incentives, resources and accountability to meet California's housing goals. Some specific elements include:

- Planning Support (local and regional planning grants)
- Incentives (Pro-housing preference and infill incentive grants)
- Funding Resources
- Accountability (penalties for noncompliant housing plans)
- Reform (collaborative processes to reform regional housing needs)

The Local Government Planning Support Grants Program provides one-time grant funding to regions and jurisdictions for technical assistance, preparation and adoption of planning documents, and process improvements. The over-arching goals of the Program are to (1) accelerate housing production; and (2) facilitate compliance to implement the sixth cycle of the regional housing need assessment (RHNA).

Grants are available to eligible applicants on a noncompetitive, Over-the-Counter (OTC) basis. A local match is not required. Applications will be accepted up until October 29, 2020.

Eligible applicants are limited to local governments, i.e., cities and counties. Eligible activities must demonstrate an increase in housing related planning activities and facilitate accelerated housing production. Eligible activities may be part of a larger planning effort (e.g., a comprehensive zoning code update). Eligible activities are not necessarily jurisdiction-wide and may include a smaller geography with a significant impact on housing production.

Applicants must propose and document plans or processes that increase housing planning and facilitate accelerating local housing production. The application must demonstrate a significant positive effect on accelerating housing production through timing, cost, approval certainty, entitlement streamlining, feasibility, infrastructure capacity, or impact on housing supply and affordability. An application must include an explanation and documentation of the nexus to accelerating housing production.

In order to be eligible for grant funding, an applicant must submit a completed application prior to October 29, 2020. Successful applicants will receive an Award Letter from the Department and will be awarded funds. Applicants will enter into a state Standard Agreement (Standard Agreement) for distribution of funds. The Standard Agreement process will specify, among other things, the amount of funds granted, timeline for expenditure of funds, and the approved use of funds. Expenditure report dates and other requirements will also be identified in the Standard Agreement.

FISCAL IMPACT:

The City is eligible to receive up to \$65,000 in planning grants under the State of California Regional Early Action Program (REAP) Planning Grant Program to complete the projects outlined in the grant application. If the Council adopts the Resolution, a budget adjustment in the amount of \$65,000 would be made following approval of the grant application.

PRIOR CITY COUNCIL ACTION:

On November 5, 2019, the City Council adopted Resolution 2019-081 authorizing application for, and receipt of, SB 2 Planning Grants Program (PGP) Funds in the amount of \$165,000. On June 16, 2020, the City Council adopted Resolution 2020-039 authorizing application for, and receipt of, Local Early Action Program (LEAP) Funds in the amount of \$65,000. The REAP grant funding would supplement both of these efforts.

ATTACHMENTS:

Attachment #1 - Resolution 2020-069 REAP Grant

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-069

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA TO
APPROVE APPLYING FOR AND ENTERING INTO AGREEMENTS FOR THE REGIONAL
EARLY ACTION PLANNING GRANT**

WHEREAS, Governor Gavin Newsom signed Assembly Bill 101 in September 2019, which established the Local Government Planning Support Grants Program which allocates \$125 million in housing planning funds to regional entities throughout the state; and

WHEREAS, the California Department of Housing and Community Development (HCD) has been assigned as the state agency overseeing this program; and

WHEREAS, the provisions of AB 101 require the California Central Coast's Councils of Government form a multiagency group comprising three representatives from each of the region's five counties to administer approximately \$8 million in housing planning funds dedicated to the Central Coast region through the Regional Early Action Planning (REAP) grant; and

WHEREAS, the Central Coast Housing Working Group has been established as the multiagency working group to administer these REAP funds pursuant to AB 101; and

WHEREAS, the Association of Monterey Bay Area Governments (AMBAG) will serve as the fiscal agent of the Central Coast Housing Working Group and will staff the group; and

WHEREAS, AMBAG will use three percent of the AB 101 Central Coast regional funding to administer the mega regional grant program, staff the Central Coast Housing Working Group, provide required reporting, and provide oversight of the grant program from 2020 to 2024; and

WHEREAS, AMBAG will allocate AB 101 housing planning funds to the four COGs in the Central Coast area: AMBAG, the San Luis Obispo Council of Governments, the Santa Barbara County Association of Governments, and the Council of San Benito County Governments; and

WHEREAS, the City of Carmel-By-The-Sea is eligible to submit a request for allocation for a portion of Central California AB 101 housing planning funds from AMBAG; and

WHEREAS, the amounts allocated to the Association of Monterey Bay Area Governments (AMBAG) are based on the allocation method approved by the Central Coast Housing Working Group; and

WHEREAS, the amounts allocated to the City of Carmel-By-The-Sea will be based on the allocation method approved by AMBAG; and

WHEREAS, AMBAG shall approve allocation requests subject to the terms and conditions of eligibility, guidelines, Notices of Funding Availability, and program requirements.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

1. Authorize the City of Carmel-By-The-Sea to request an allocation not to exceed \$65,000 from the Association of Monterey Bay Area Governments which acts on behalf of the Central Coast Housing Working Group, and
2. Authorize the City of Carmel-By-The-Sea to enter into agreements, and take further actions as may be necessary to give effect to this resolution, such as executing amendments and approving funding applications with the Association of Monterey Bay Area Governments for REAP grant funding.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
CONSENT AGENDA**

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Brian Pierik, City Attorney
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-070 amending Resolution 2020-057 regarding rules for the use of the beach in the City of Carmel by-the-Sea

RECOMMENDATION:

Adopt Resolution 2020-070 amending Resolution 2020-057 regarding rules for the use of the beach in the City of Carmel by-the-Sea.

In the alternative, do not adopt Resolution 2020-070 amending Resolution 2020-057 and allow the beach rules stated in Resolution 2020-057 to expire on October 7, 2020.

BACKGROUND/SUMMARY:

On August 11, 2020, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Administrator, in his capacity as the Director of Emergency Services, issued Order No. 20-2 issuing rules for the use of the beach in the City.

On September 1, 2020, the City Council adopted Resolution No. 2020-057 ratifying Order No. 2-20 with the following modifications:

2.1 No person shall have on the beach any of the following: umbrellas, shade structures or tents, beach equipment, BBQs, tables, fireworks or propane or other fuel tanks.

2.2 This section is stricken entirely

2.3 No groups of more than 10 people shall be permitted on the beach.

2.4 All persons using the beach must comply with all Orders issued by Governor Newsom, the State Public Health Officer and the County Public Health Officer

Resolution 2020-057 provided that the Order 20-2, as modified, will expire on October 7, 2020 unless extended by action of the City Council.

The proposed Resolution attaches Resolution 2020-057 as Exhibit A. The proposed Resolution is presented for consideration in the event the City Council decides to extend the date of the beach rules beyond October 7, 2020. If the Council decides to extend the beach rules beyond October 7, 2020, then the date of the extension will be inserted into the proposed Resolution.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

The City Council adopted Resolution 2020-057 on September 1, 2020.

ATTACHMENTS:

Attachment #1 - Resolution 2020-070 Extending Beach Rules

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-070

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING RESOLUTION 2020-057 REGARDING RULES FOR THE USE OF THE BEACH IN
THE CITY OF CARMEL BY-THE-SEA**

WHEREAS, on August 11, 2020, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Administrator, in his capacity as the Director of Emergency Services, issued Order No. 20-2 issuing rules for the use of the beach in the City; and

WHEREAS, on September 1, 2020, the City Council adopted Resolution No. 2020-057 ratifying Order No. 2-20 with the following modifications:

2.1 No person shall have on the beach any of the following: umbrellas, shade structures or tents, beach equipment, BBQs, tables, fireworks or propane or other fuel tanks.

2.2 This section is stricken entirely

2.3 No groups of more than 10 people shall be permitted on the beach.

2.4 All persons using the beach must comply with all Orders issued by Governor Newsom, the State Public Health Officer and the County Public Health Officer

WHEREAS, Resolution 2020-057 (attached hereto as Exhibit 1) provided that the Order 20-2, as modified, will expire on October 7, 2020 unless extended by action of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA, that the foregoing Recitals and Exhibit A attached hereto are hereby incorporated by reference as though fully set forth here; Order 20-2 as modified by Resolution 2020-057 will expire on _____ unless extended by action of the City Council; and

BE IT FURTHER RESOLVED, that the City Administrator or his designee is authorized to take whatever other action is authorized under the Carmel-by-the-Sea Municipal Code and state and federal law, subject to any required authorization from the City Council, consistent with this Resolution and its basic purposes to implement Order 20-2 as modified by Resolution 2020-057.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 6th day of October 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-057

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
RATIFYING THE DIRECTOR OF EMERGENCY SERVICES ORDER NO. 20-2 ISSUING
RULES FOR THE USE OF THE BEACH IN THE CITY OF CARMEL BY-THE-SEA**

WHEREAS, in December 2019, reports began spreading worldwide about a flu-like virus first found in China that was significantly more deadly than the flu generally, with the virus becoming known as the Coronavirus ("COVID-19"); and

WHEREAS, on March 4, 2020, a State of Emergency was proclaimed by Governor Gavin Newsom; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") classified the spread of COVID-19 internationally as a global pandemic; and

WHEREAS, on March 12, 2020 at 10:26 a.m., acting in my capacity as the Director of Emergency Services, I issued a Proclamation ("Proclamation") ordering there is a local state of emergency ("Local Emergency") which now exists in the City due to COVID-19 ("Coronavirus"); and

WHEREAS, on March 13, 2020 at 11:00 a.m., there was a Special Meeting of the City Council at which the Council adopted Resolution No. 2020-021 ratifying the City Administrator's Proclamation of the Existence of a Local Emergency due to the Worldwide Spread of the Coronavirus ("COVID-19"), and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 in which all residents were directed to immediately heed the State public health directives which the Governor ordered the Department of Public Health to develop for COVID-19; and

WHEREAS, on May 4, 2020, Governor Gavin Newsom issued Executive Order N-60-20 which directed all residents to continue to obey State public health directives; and

WHEREAS, Governor Gavin Newsom has issued multiple Executive Orders due to COVID-19 which have significantly impacted individuals and the operations of businesses and local governments; and

WHEREAS, the State Public Health Officer & Director of the California Department of Public Health ("State Public Health Officer") has issued multiple Orders and directives due to COVID-19; and

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WHEREAS, Health & Safety Code Section 120155 authorizes the City's peace officers to enforce orders of the State Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease; and

WHEREAS, the Monterey County Public Health Officer ("County Public Health Officer") has issued multiple Orders due to COVID-19; and

WHEREAS, Health & Safety Code Section 101029 authorizes the City's peace officers to enforce orders of the County Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease and Government Code Section 41601 further authorizes the City's Chief of Police to enforce local health orders to prevent the spread of disease; and

WHEREAS, pursuant to Urgency Ordinance No. 2020-004 adopted on August 4, 2020, City peace officers and the City Compliance Coordinator may enforce the Orders of the Governor, State Public Health Officer and the County Public Health Officer; and

WHEREAS, the COVID-19 pandemic continues to spread rapidly worldwide and in the United States, and presents an immediate and significant risk to public health and safety, and resulting in serious illness or death; and

WHEREAS, City Municipal Code Section 2.64.060 sets forth the powers and duties of the Director of Emergency Services which includes the power to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council; and

WHEREAS, due to the serious health risks due to COVID-19, and the spread of COVID-19 from person to person, as well as other means of transmission, it is reasonable and necessary to issue and enforce rules regarding the use of City beaches; and

WHEREAS, City Municipal Code Section 2.64.100 provides that It shall be a misdemeanor, punishable by a fine of not to exceed \$500.00, or by imprisonment for not to exceed six months, or both, for any person, during an emergency, to: any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to imperil the lives or property of inhabitants of this City; and

WHEREAS, City Municipal Code Section 1.16.010 provides that every person convicted of a violation of any provision of the Municipal Code may be punished as a misdemeanor with a fine not exceeding \$1000 and/or imprisonment for a term not exceeding six month or punished as an infraction with a fine up to \$100.00 for each violation, \$200.00 for second violation within one year and \$500.00 for a third and any subsequent violation within one year; and

WHEREAS, on August 11, 2020, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the City Administrator, in his capacity as the Director of Emergency Services, issued Order No. 20-2 issuing rules for the use of the beach in the City and a copy of Order 20-2 is attached hereto as Exhibit A; and

WHEREAS, Order 20-2 was issued pursuant to the authority granted to the Director of Emergency Services by all applicable laws including, but not limited to, Government Code Section 38791 and City Municipal Code Section Chapter 2.64

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA, that the foregoing Recitals and Exhibit A attached hereto are hereby incorporated by reference as though fully set forth here; Order 20-2 will expire on October 7, 2020 unless extended by action of the City Council; and

BE IT FURTHER RESOLVED, that Order 20-2 Issuing Rules for the use of the beach in the City issued by the City Administrator acting as the Director of Emergency Services is hereby confirmed and ratified by the City Council of the City of Carmel-by-the-Sea except as modified herein and except that the rules for the use of the City Beaches shall be as follows:

2.1 No person shall have on the beach any of the following: umbrellas, shade structures or tents, beach equipment, BBQs, tables, fireworks or propane or other fuel tanks.

2.2 This section is stricken entirely

2.3 No groups of more than 10 people shall be permitted on the beach.

2.4 All persons using the beach must comply with all Orders issued by Governor Newsom, the State Public Health Officer and the County Public Health Officer; and

BE IT FURTHER RESOLVED, that the City Administrator or his designee is authorized to take whatever other action is authorized under the Carmel-by-the-Sea Municipal Code and state and federal law, subject to any required authorization from the City Council, consistent with this Resolution and its basic purposes to implement Order 20-2.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of September 2020, by the following vote:

AYES: COUNCIL MEMBERS BARON, REIMERS, THEIS, MAYOR PRO TEM RICHARDS; MAYOR POTTER

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

EXHIBIT A

**DIRECTOR OF EMERGENCY SERVICES ORDER NO. 20-2 ISSUING RULES FOR
THE USE OF THE BEACH IN THE CITY OF CARMEL BY-THE-SEA**
Order 20-2 has been modified by Resolution 2020-57

WHEREAS, pursuant to Carmel-by-the-Sea Municipal Code ("CMC") Section 2.64.050, as City Administrator of the City of Carmel-by-the-Sea ("City"), I serve as the Director of Emergency Services for the City; and

WHEREAS, in December 2019, reports began spreading worldwide about a flu-like virus first found in China that was significantly more deadly than the flu generally, with the virus becoming known as the Coronavirus ("COVID-19"); and

WHEREAS, on March 4, 2020, a State of Emergency was proclaimed by Governor Gavin Newsom; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") classified the spread of COVID-19 internationally as a global pandemic; and

WHEREAS, on March 12, 2020 at 10:26 a.m., acting in my capacity as the Director of Emergency Services, I issued a Proclamation ("Proclamation") ordering there is a local state of emergency ("Local Emergency") which now exists in the City due to COVID-19 ("Coronavirus"); and

WHEREAS, on March 13, 2020 at 11:00 a.m., there was a Special Meeting of the City Council at which the Council adopted Resolution No. 2020-021 ratifying the City Administrator's Proclamation of the Existence of a Local Emergency due to the Worldwide Spread of the Coronavirus ("COVID-19"), and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 in which all residents were directed to immediately heed the State public health directives which the Governor ordered the Department of Public Health to develop for COVID-19; and

WHEREAS, on May 4, 2020, Governor Gavin Newsom issued Executive Order N-60-20 which directed all residents to continue to obey State public health directives; and

WHEREAS, Governor Gavin Newsom has issued multiple Executive Orders due to COVID-19 which have significantly impacted individuals and the operations of businesses and local governments; and

WHEREAS, the State Public Health Officer & Director of the California Department of Public Health ("State Public Health Officer") has issued multiple Orders and directives due to COVID-19; and

WHEREAS, Health & Safety Code Section 120155 authorizes the City's peace officers to enforce orders of the State Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease; and

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Director of Emergency Services Order 20-2

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WHEREAS, the Monterey County Public Health Officer ("County Public Health Officer") has issued multiple Orders due to COVID-19; and

WHEREAS, Health & Safety Code Section 101029 authorizes the City's peace officers to enforce orders of the County Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease and Government Code Section 41601 further authorizes the City's Chief of Police to enforce local health orders to prevent the spread of disease; and

WHEREAS, pursuant to Urgency Ordinance No. 2020-004 adopted on August 4, 2020, City peace officers and the City Compliance Coordinator may enforce the Orders of the Governor, State Public Health Officer and the County Public Health Officer; and

WHEREAS, the COVID-19 pandemic continues to spread rapidly worldwide and in the United States, and presents an immediate and significant risk to public health and safety, and resulting in serious illness or death; and

WHEREAS, City Municipal Code Section 2.64.060 sets forth the powers and duties of the Director of Emergency Services which includes the power to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council; and

WHEREAS, due to the serious health risks due to COVID-19, and the spread of COVID-19 from person to person, as well as other means of transmission, it is reasonable and necessary to issue and enforce rules regarding the use of City beaches; and

WHEREAS, City Municipal Code Section 2.64.100 provides that it shall be a misdemeanor, punishable by a fine of not to exceed \$500.00, or by imprisonment for not to exceed six months, or both, for any person, during an emergency, to: any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to imperil the lives or property of inhabitants of this City; and

WHEREAS, City Municipal Code Section 1.16.010 provides that every person convicted of a violation of any provision of the Municipal Code may be punished as a misdemeanor with a fine not exceeding \$1000 and/or imprisonment for a term not exceeding six months or punished as an infraction with a fine up to \$100.00 for each violation, \$200.00 for second violation within one year and \$500.00 for a third and any subsequent violation within one year; and

WHEREAS, In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to issue and implement this Order 20-2 to protect life, property and civil order and I am issuing this Order 20-1 pursuant to the authority granted to me by all applicable laws including, but not limited to, Government Code Section 38791, CMC Chapter 2.64 and Executive Order N-28-20 issued by the Governor.

WHEREAS, based upon the foregoing, I hereby find that this Order is necessary for the immediate preservation of the public peace, health and safety.

NOW, THEREFORE, AS THE DIRECTOR OF EMERGENCY SERVICES FOR THE CITY OF CARMEL BY-THE-SEA, I HEREBY ISSUE THE FOLLOWING ORDER:

SECTION 1. This Order hereby incorporates by reference as though fully set forth here the above recitals.

SECTION 2. It is hereby ordered that the following rules shall apply for the use of City beaches at all times:

2.1 No person shall have on the beach any of the following: coolers or other containers for the storage of food or drinks, umbrellas, shade structures or tents, beach equipment, BBQs, chairs, tables, fireworks or propane or other fuel tanks.

2.2 Persons may only use the beach for walking, running, swimming and surfing.

2.3 No person shall engage in the following activities at the beach: group activities, sports except as allowed by subsection 2.2, sitting, lounging, picnics, sunbathing, BBQs or fires of any kind.

2.4 All persons using the beach must comply with all Orders issued by Governor Newsom, the State Public Health Officer and the County Public Health Officer.

SECTION 3. This Order shall be punishable as set forth in the City Municipal Code Section 1.16.010 and Section 2.64.100.

SECTION 4. This Order shall be in force and effect until and unless superseded by a duly enacted Ordinance or Resolution of the City Council of the City or a further Order by the Director of Emergency Services

SECTION 5. Severability Clause. If any section, subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Order. I hereby declare that I would have issued this Order and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Order would be subsequently declared invalid or unconstitutional.

SECTION 16. The City Clerk shall certify to the adoption of this Order and shall cause a certified Order to be filed in the Office of the City Clerk.

This Order is hereby issued on August 12, 2020 at 11:26 am/bm

Chip Rerig, Director of Emergency Services

Attest:

Britt Avrit, City Clerk



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
CONSENT AGENDA

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Brian Pierik, City Attorney

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-071 authorizing the City Administrator to execute an agreement regarding Verizon Wireless Small Cell Facilities

RECOMMENDATION:

Adopt Resolution 2020-071 authorizing the City Administrator to execute an agreement regarding Verizon Wireless Small Cell Facilities.

BACKGROUND/SUMMARY:

This item presents for consideration by the Council an Agreement Regarding Verizon Wireless Small Cell Facilities (Attachment 2) and the Exhibits to the Agreement (Attachment 3).

On March 27, 2019, Verizon Wireless submitted applications for Design Review, Use Permit and Encroachment Permit for five “small cell” wireless communications facilities mounted on existing or replacement PG&E utility poles in the right of way of the R-1 zoning district (“2019 Applications”). The proposed sites (also known as “Nodes”) for the five facilities are depicted on Exhibit A attached to the Agreement and are identified as follows:

- Site 1: San Antonio 1 NW of 10th
- Site 2: San Antonio 3 SE of 13th
- Site 3: 10th 1 NW of Dolores
- Site 4: Lincoln NE of 12th
- Site 5: Mission 2 SW of 12th

On June 12, 2019, the City Planning Commission denied the 2019 Applications. The Planning Commission adopted Findings for Decision in support of its denial of the 2019 Applications.

On June 26, 2019, Verizon Wireless filed an appeal to the City Council of the denial by the City Planning Commission (“Appeal”).

On September 10, 2019 there was a hearing before the City Council on the Appeal by Verizon Wireless. After consideration of the Staff Report, the presentation by City staff and the comments from the

representatives of Verizon Wireless and the public, the City Council voted to deny the Appeal (“Denial”)

Verizon Wireless contends, among other things, that Chapter 17.46 of the City Municipal Code is preempted by Federal and State law. However, to accommodate the concerns of the City, Verizon Wireless intends to submit new applications to the City for the alternative sites subject to the terms of this Agreement (“New Applications”)

Within eight (8) months of the effective date of the proposed Agreement attached to this Staff Report Verizon Wireless agrees to submit the New Applications for the Project based on its attempted redesign of the network. Verizon Wireless would be entitled under the Agreement to a one-time, six (6) month extension of this time period in the event of extenuating circumstances, regulatory delays, or other events beyond Verizon Wireless’s control.

Each of the New Applications shall be completed in accordance with the locations depicted in Exhibit B to the Agreement and identified in the chart below:

	Original Location	New Location
Node 1	San Antonio 1 NW of 10th	Relocated to Carmello Street between 8th and 9th Avenues with battery back-up, only if the City will approve battery back-up, subject to the limitations in Section 2(b) in the Agreement
Node 2	San Antonio 3 SE of 13th	Relocated to a location in the County’s jurisdiction
Node 3	10th 1 NW of Dolores	Replaced by a rooftop facility on the City’s Sunset Center with battery back-up, subject to the limitations in Section 1(c)(viii) in the Agreement
Node 4	Lincoln 3 NE of 12th	Replaced by a rooftop facility on the City’s Sunset Center with battery back-up, subject to the limitations in Section 1(c)(viii) in the Agreement
Node 5	Mission 2 SW of 12th	Relocated to a location in the County’s jurisdiction

The Agreement includes additional terms relating to the proposed New Applications including the terms for a Lease of the rooftop of the Sunset Center which will contain Nodes 3 and 4 for the sum of \$1000 per month.

Nodes 2 and 5 are proposed to be relocated to the County’s jurisdiction. If PG&E or the County do not approve this relocation, then Verizon has reserved the right in the Agreement to reapply to the City for Nodes 2 and 5 to be located in the City at the original locations which would be subject to approval by the City.

Node 1 on Carmello Street would be located on PG&E facilities. If PG&E does not approve Node 1, then Verizon has reserved the right in the Agreement to reapply to the City for Node 1 to be located in the

City at the original location which would be subject to approval by the City.

All three Nodes proposed for the City (one on Carmello and two on Sunset Center rooftop) will have battery backup subject to the provisions included in the Agreement in Section 2(b) for Carmello and Section 1(c) for Sunset Center.

FISCAL IMPACT:

No direct fiscal impact for this action.

PRIOR CITY COUNCIL ACTION:

On September 10, 2019 City Council denied the Appeal by Verizon Wireless from the Planning Commission decision which denied the 2019 Applications by Verizon Wireless.

ATTACHMENTS:

Attachment #1 - Resolution 2020-071 Verizon Wireless Small Cell Facilities Agreement

Attachment #2 - Verizon Wireless Small Cell Facilities Agreement

Attachment #3 - Exhibits to Verizon Wireless Small Cell Facilities Agreement

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-071

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT REGARDING
VERIZON WIRELESS SMALL CELL FACILITIES**

WHEREAS, on March 27, 2019, Verizon Wireless submitted applications for Design Review, Use Permit and Encroachment Permit for five “small cell” wireless communications facilities mounted on existing or replacement PG&E utility poles in the right of way of the R-1 zoning district (“2019 Applications”). The proposed sites (also known as “Nodes”) for the five facilities are depicted on Exhibit A attached hereto and are identified as follows:

- Site 1: San Antonio 1 NW of 10th
- Site 2: San Antonio 3 SE of 13th
- Site 3: 10th 1 NW of Dolores
- Site 4: Lincoln NE of 12th
- Site 5: Mission 2 SW of 12th

WHEREAS, on June 12, 2019, the City Planning Commission denied the 2019 Applications. The Planning Commission adopted Findings for Decision in support of its denial of the 2019 Applications.

WHEREAS, On June 26, 2019, Verizon Wireless filed an appeal to the City Council of the denial by the City Planning Commission (“Appeal”).

WHEREAS, On September 10, 2019 there was a hearing before the City Council on the Appeal by Verizon Wireless. After consideration of the Staff Report, the presentation by City staff and the comments from the representatives of Verizon Wireless and the public, the City Council voted to deny the Appeal (“Denial”).

WHEREAS, Verizon Wireless contends, among other things, that the City should have approved the 2019 Applications and further that the City Municipal Code is preempted by Federal and State law. However, in the interest of providing alternative sites to minimize the impact of the facilities to the City and its residents, Verizon Wireless intends to submit new applications to the City for alternative sites subject to the terms of this Agreement (“New Applications”).

WHEREAS, on October 6, 2020, there was presented to the City Council for consideration an Agreement Regarding Verizon Wireless Small Cell Facilities.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA DOES HEREBY:**

Authorize the City Administrator to execute an Agreement Regarding Verizon Wireless Small Cell Facilities and to execute the Letter of Authorization attached as Exhibit “C” to the Agreement.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

AGREEMENT REGARDING VERIZON WIRELESS SMALL CELL FACILITIES

This Agreement ("Agreement") is made and entered into between GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, a California limited partnership d/b/a VERIZON WIRELESS ("Verizon Wireless"), and CARMEL-BY-THE-SEA, a California municipal corporation ("City") to agree on an entitlement path for certain small cell wireless facilities in the City. Verizon Wireless and City are referred to herein individually as a "Party" and collectively as the "Parties." The Agreement shall be effective as of date specified in Section 19.

Recitals

The Parties enter into this Agreement based on the following facts:

A. On March 27, 2019, Verizon Wireless submitted applications for Design Review, Use Permit and Encroachment Permit for five "small cell" wireless communications facilities mounted on existing or replacement PG&E utility poles in the right of way of the R-1 zoning district ("2019 Applications"). The proposed sites (also known as "Nodes") for the five facilities are depicted on the map attached as Exhibit A, identified as the following locations:

Site 1: San Antonio 1 NW of 10th

Site 2: San Antonio 3 SE of 13th

Site 3: 10th 1 NW of Dolores

Site 4: Lincoln NE of 12th

Site 5: Mission 2 SW of 12th

B. On June 12, 2019, the City Planning Commission denied the 2019 Applications. The Planning Commission adopted Findings for Decision in support of its denial of the 2019 Applications.

C. On June 26, 2019, Verizon Wireless filed an appeal to the City Council of the denial by the City Planning Commission ("Appeal").

D. On September 10, 2019 there was a hearing before the City Council on the Appeal by Verizon Wireless. After consideration of the Staff Report, the presentation by City staff and the comments from the representatives of Verizon Wireless and the public, the City Council voted to deny the Appeal ("Denial").

E. Verizon Wireless contends, among other things, that Chapter 17.46 of the City Municipal Code is preempted by Federal and State law.

F. To accommodate the concerns of the City, Verizon Wireless intends to submit new applications to the City for the alternative sites subject to the terms of this Agreement ("New Applications")

Agreement

In consideration of the execution of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions hereof, the Parties hereby agree that the foregoing Recitals are true and correct and said Recitals are hereby incorporated by this reference and the Parties further agree as follows:

1. Application Process

- a. Locations: Within eight (8) months of the effective date of this Agreement, Verizon Wireless agrees to submit New Applications for the Project based on its attempted redesign of the network. Verizon Wireless is entitled to a one-time, six (6) month extension of this time period in the event of extenuating circumstances, regulatory delays, or other events beyond Verizon Wireless's control. Each of the New Applications shall be completed in accordance with the locations depicted in Exhibit B and identified in the chart below:

	Original Location	New Location
Node 1	San Antonio 1 NW of 10 th	Relocated to Carmello Street between 8 th and 9 th Avenues with battery back-up, only if the City will approve battery back-up, subject to the limitations in Section 2(b)
Node 2	San Antonio 3 SE of 13 th	Relocated to a location in the County's jurisdiction
Node 3	10 th 1 NW of Dolores	Replaced by a rooftop facility on the City's Sunset Center with battery back-up, subject to the limitations in Section 1(c)(viii) below
Node 4	Lincoln 3 NE of 12 th	Replaced by a rooftop facility on the City's Sunset Center with battery back-up, subject to the limitations in Section 1(c)(viii) below
Node 5	Mission 2 SW of 12th	Relocated to a location in the County's jurisdiction

- b. Verizon Wireless will submit applications for Nodes 1 and 3 and 4 to the City, and Nodes 2 and 5 to the County.
- c. Sunset Center Lease: The City agrees to consider signing a lease ("Lease") with Verizon Wireless for a rooftop facility on the City's Sunset Center.
- i. The City agrees to execute a letter of authorization, attached as Exhibit C, simultaneously with this Agreement.
 - ii. The Lease, if approved by the City Council, will be fully executed by the Parties within six (6) months of the effective date of this Agreement.
 - iii. The City agrees to timely and diligently provide documents to Verizon Wireless, upon its request, in the interest of signing the Lease. .
 - iv. The initial Lease rate will be \$1,000 per month for a Lease term of five (5)

- years with a minimum of four (4) subsequent options for five (5) years each, for a total of no less than twenty-five (25) years.
- v. The final Lease will be substantially similar to Verizon Wireless's lease form, attached as Exhibit D without material modifications.
 - vi. The Lease shall include provisions that do not require the City's approval as the landlord for modification of the facility.
 - vii. Verizon Wireless agrees to design the Sunset Center facility to comply with eligible facilities request requirements under 47 U.S.C. § 1455(a), and the City agrees to process the permit as an eligible facilities request. The City's request for battery back-up shall not remove the application from consideration as an eligible facilities request.
 - viii. The site will include battery back-up, as requested by the City, provided the batteries are approved by the City and not used for grounds to deny the New Application. In the event that the battery back-up could be used as a ground for denial, Verizon Wireless reserves the right to remove the battery back-up from the New Application.
 - ix. The City will be responsible for the cost of any structural improvements to the Sunset Center required for the City's preferred design for battery back-up.
 - x. Verizon Wireless's obligation to pay rent shall commence upon the first day of the month after Verizon Wireless begins installation of the wireless equipment of all four sites in Section 1(a).
 - xi. If the City does not approve the proposed Lease consistent with the provisions herein, then Verizon Wireless reserves the right to reapply ("Reapplication for Nodes 3 and 4") to the City for original locations for Nodes 3 and 4. If the City does not approve the Reapplication for Nodes 3 and 4, then Verizon Wireless reserves all its rights including, but not limited, the right to challenge the denial of either the 2019 Applications or Reapplications for Nodes 3 and 4 by filing an action in state or federal court.
- d. Notice to City: Verizon Wireless will determine the schedule for submitting the new applications for Node 1 and the Sunset Center facility and advise the City of a proposed submittal date at least seven (7) days in advance of submitting an application subject to this Agreement.
 - e. Permit Fees: Verizon Wireless will pay the required permit fees for the applications.
 - f. Federal Shot Clock Time Periods: The City understands that Verizon Wireless will strictly enforce the 60-day shot clock periods established by the Federal Communications Commission ("FCC").
 - g. PG&E, County, or Coastal Commission Denial:
 - i. In the event that either PG&E or the County do not approve the New Applications for Nodes 2 and/or 5 ("Disapproval"), the City agrees to

consider a revision to its wireless ordinance to comply with federal and state law within six (6) months of Verizon Wireless providing written notice to the City of that Disapproval. Verizon Wireless shall reapply (“Reapplication for Nodes 2 and 5”) to the City for approval of the original location within 30 days of the Disapproval, following steps 1(d) through 1(f) and Sections 2 and 3 of this Agreement. If the City does not approve the Reapplication for Nodes 2 and 5, then Verizon Wireless reserves all its rights including, but not limited, the right to challenge the denial of the 2019 Applications, New Applications, or Reapplications for Nodes 2 and 5 by filing an action in state or federal court.

- ii. In the event that PG&E does not approve the New Application for Node 1 (“Disapproval”), Verizon Wireless shall reapply for an alternate location acceptable to PG&E, within 60 days of that Disapproval. If that location falls back within the City’s jurisdiction, Verizon Wireless shall provide written notice to the City of PG&E’s Disapproval and reapply (“Reapplication for Node 1”) for the original location within 60 days of that denial, following steps 1(d) through 1(f). The City agrees to consider a revision to its wireless ordinance to comply with federal and state law within six (6) months of receiving Verizon Wireless’s written notice. If the City does not approve the Reapplication for Node 1, then Verizon Wireless reserves all its rights including, but not limited, the right to challenge the denial of the 2019 Application, New Application, or Reapplication for Node 1 by filing an action in state or federal court.
- iii. In the event that the Coastal Commission does not approve any application that is appealed to it, Verizon Wireless shall reapply (“Reapplication Due to Coastal Commission Non-Approval”) for the original location within 60 days of that denial, following steps 2(a) through 2(d). If the City does not approve the Reapplication Due to Coastal Commission Non-Approval, then Verizon Wireless reserves all its rights including, but not limited, the right to challenge any denial by filing an action in state or federal court.

2. Small Cell Designs and Locations

- a. Each of the New Applications will substantially reflect either the pole-top antenna with pole-mounted equipment design (attached as Exhibit E, shown without battery back-up power) or the rooftop facility design (attached as Exhibit E) (collectively, the “Designs”).
- b. The New Applications under the City’s jurisdiction will include battery back-up, as requested by the City, provided the batteries are approved and are not used for grounds to deny the New Application. In the event that the battery back-up could be used as a ground for denial, Verizon Wireless reserves the right to remove the battery back-up from any New Application.

3. Timely Consideration of Applications

- a. The City shall take final action on each application in strict compliance with FCC shot clock periods unless Verizon Wireless agrees to toll the shot clock. The City can make no guarantee or assurances that it will approve the applications. However, the Parties agree that an approval or denial of the applications will have the impacts on the Parties' respective rights described in this Agreement.
- b. In the event the City fails to take final action on the applications within the timeline specified in Section 3(a), then the application shall be deemed approved by operation of law.
- c. After the City approves any of the applications, either explicitly or by operation of law, it will issue any required subsequent approvals for the wireless facilities, including encroachment permits, within ten (10) days after Verizon Wireless submits any required application.

4. Tolling of Statute of Limitations

The Parties agree to extend the statute of limitations for Verizon Wireless to file an action pursuant to the federal Telecommunications Act to a date six months following the last final action taken by the City in connection with all of the proposed applications by Verizon Wireless as described in this Agreement.

5. Release of Claims

In the event the City takes final action to approve each of the applications and reapplications, if any, within the time limits set forth under Section 3, above, and approves the Lease described in Section 1 of this Agreement, Verizon Wireless agrees to execute a release all claims ("Release") against the City related to the Denial, in a form subject to approval by the City Attorney, within twenty (20) days after the City takes final action to approve the last of the applications.

Effective upon the execution of the Release by Verizon Wireless, each Party hereby releases the other Party from all other claims, demands, actions and causes of action of any nature which are currently known regarding the Denial, as well as all claims, demands, actions and causes of action regarding such matters that the Parties do not know or suspect to exist in its favor as of the date of this Agreement, which, if known at the time of executing this Agreement, might have affected the Agreement as set forth herein and each of the Parties also hereby specifically waives the protections of California Civil Code section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

6. Exceptions to Release

Notwithstanding Section 8 above, nothing in this Agreement shall be construed as a release by any Party of (i) any obligation or claim arising out of a breach of this Agreement; or (ii) any obligation or

claim arising out of any future application to install or modify any wireless telecommunications facility; or (iii) any challenge to the City's regulations applicable to wireless communication facilities as applied to any future application, other than the applications subject to this Agreement.

7. Termination of Agreement

This Agreement shall terminate automatically and have no further legal effect in the event the City takes final action to deny any of the applications. In addition, Verizon Wireless shall have the right to terminate this Agreement by written notice to the City if the City approves any of the applications with conditions that are not reasonably acceptable to Verizon Wireless. Verizon Wireless agrees that within fifteen (15) days after it receives written notice of approval, it shall give written notice to the City specifying which conditions of approval are not reasonably acceptable. In its discretion, the City may schedule a future agenda item to discuss the concerns of Verizon Wireless. If the matter cannot be resolved to the Parties' satisfaction, then the approval shall be considered a denial for the purposes of this Agreement.

8. Effect of Agreement

It is understood and agreed that this Agreement is the compromise of disputed claims. Therefore, the terms of this Agreement are not to be construed as an admission of liability on the part of the City, which expressly denies any such liability, or as an admission by Verizon Wireless of the validity of any defense by the City or the legality of the City's Denial. This Agreement is entered into solely for the purposes of settling disputed claims. The terms of this Agreement shall not be admissible in any arbitration, litigation, or other proceedings for any purpose, except as required to enforce this Agreement.

9. Binding on Successors and Assigns

This Agreement shall inure to the benefit of and bind and be binding upon the managing agents, shareholders, officers, directors, agents, employees, attorneys, heirs, successors, partners and assigns of the undersigned Parties.

10. Advice of Counsel

Each of the Parties to this Agreement represents and warrants that it has engaged separate counsel to represent it with respect to this Agreement and all matters covered herein, that it has been fully advised by said attorneys with respect to its rights and with respect to the execution of this Agreement and as to all matters which are subject to the mutual releases contained herein, and that it has read this Agreement and understands the terms thereof.

11. Attorneys' Fees and Costs

The Parties agree to bear their own attorneys' fees and costs in connection with the preparation and negotiation of this Agreement, as well as any fees and costs incurred in the Lawsuit.

12. Complete Agreement

This Agreement constitutes the entire, full and complete Agreement between the Parties hereto, and supersedes all prior agreements, if any.

13. Enforcement

In the event of a breach of the terms of this Agreement, any action to enforce this Agreement shall be brought in the United States District Court for the Northern District of California. The terms of this Agreement shall be interpreted, enforced and governed under the laws of the State of California (excluding California's choice of law rules). This Agreement is the result of negotiations between the Parties, each of which has participated in the drafting hereof. The prevailing Party in any action or proceeding to enforce this Agreement shall be entitled to recover their attorneys' fees in enforcing their rights under this Agreement.

14. Execution of Documents

The Parties agree to execute any and all documents reasonably necessary to effectuate the terms, conditions, and purposes of this Agreement.

15. Warranty of Authority

In executing this Agreement, each person executing this Agreement further represents and warrants that they have the authority to bind their respective entities, and that those Party-entities have the right and authority to compromise, settle, release and discharge all of the claims released herein. Execution of this Agreement by the City Administrator shall be deemed to evidence legally proper approval by the City Council of this Agreement as a binding obligation of the City.

16. Written Modifications Only

The terms of this Agreement shall not be modified or amended except in writing, signed by all Parties or their designated representatives for such purpose.

17. Time is of the Essence

Time is of the essence in this Agreement.

18. Counterparts

This Agreement may be executed in counterparts, which when taken together shall constitute one binding Agreement. Scanned and facsimile signatures shall be considered as binding as original signatures.

19. Effective Date of Agreement

This Agreement shall be deemed effective when it has been executed by both Verizon Wireless and the City, and as of the date the last party signed it.

20. Severability

If one or more of the provisions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected. Each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

**GTE MOBILNET OF CALIFORNIA LIMITED
PARTNERSHIP dba VERIZON WIRELESS**

CARMEL-BY-THE-SEA

By: _____

By: _____

Printed name: Shannon Champion

Printed Name: Chip Rerig

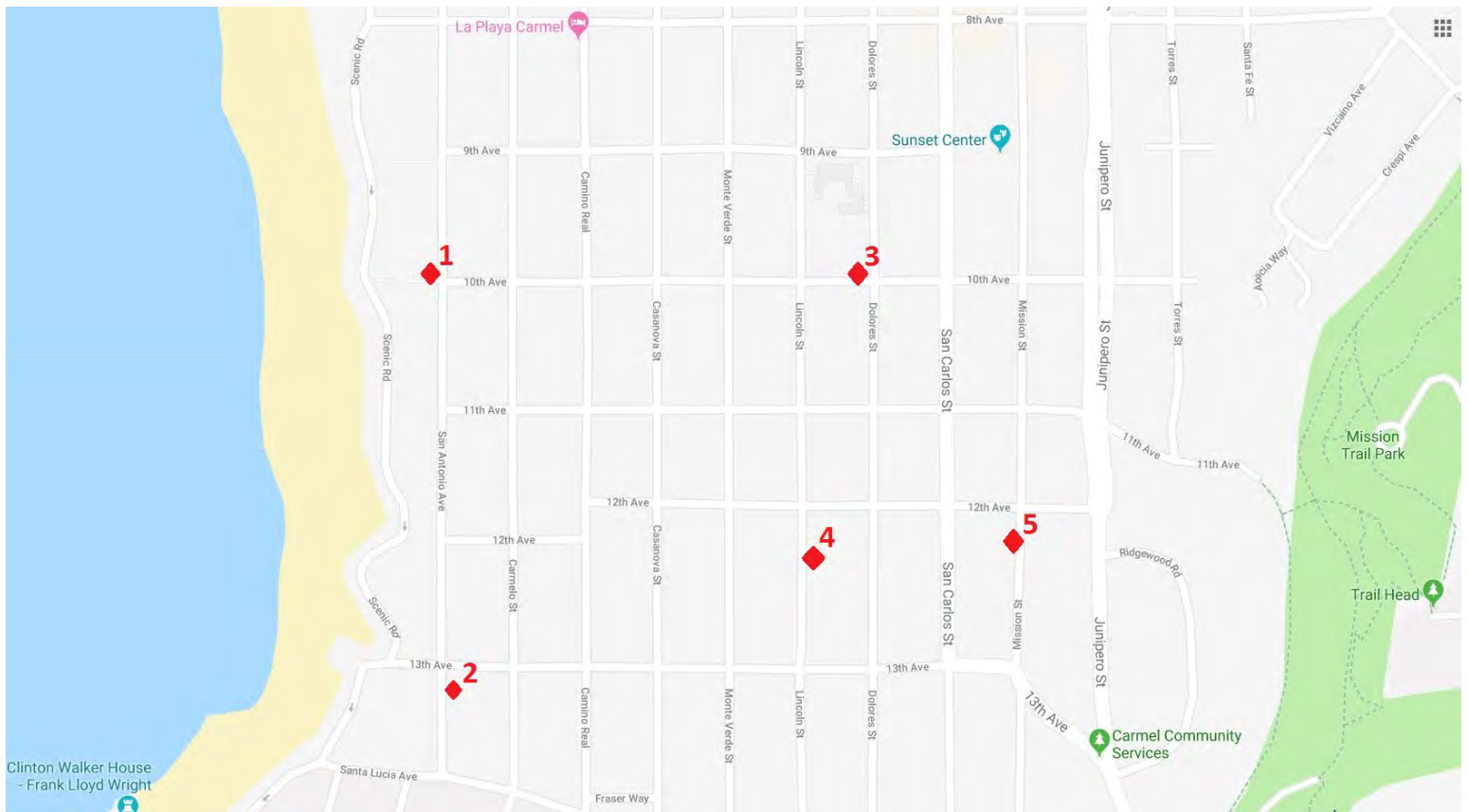
Its: Pacific Market General Counsel

Title: City Administrator

Date: _____

Date: _____

Map of Five Original Proposed Locations



Map of New Locations



Letter of Authorization

APPLICATION FOR ZONING/LAND USE ENTITLEMENTS

Property Address:	<u>San Carlos Street at Ninth Avenue, Carmel-By-The-Sea, CA 93923</u>
Assessor's Parcel Number:	<u>010-151-001-000 & 010-143-001-000</u>

City of Carmel-by-the-Sea, the owner(s) of the above-described property, authorize GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless, with offices located at 2785 Mitchell Drive, Walnut Creek, CA 94598, its employees, representatives, agents, and/or consultants, to create, file and/or manage any land use and building permit applications, or any other entitlements necessary to construct and operate a wireless communications facility on the above-described property.

By: _____
Signature

Print Name: Chip Rerig

Title: City Administrator

Date: _____

BUILDING AND ROOFTOP LEASE AGREEMENT

This Building and Rooftop Lease Agreement (the "Agreement") made this _____ day of _____, 20__, between _____, with its principal offices located at _____, hereinafter designated LESSOR and _____, hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **GRANT.** In accordance with this Agreement, LESSOR hereby grants to LESSEE the right to install, maintain and operate communications equipment ("Use") in and/or upon that certain building or facility owned, leased or controlled by LESSOR at _____ **[INSERT COMMON ADDRESS]** (the "Property"). The Property is legally described on Exhibit "A" attached hereto and made a part hereof. LESSEE's communications equipment will be installed on a portion of the Property consisting of approximately ____ square feet of floor space in the building ("Interior Space") and approximately ____ square feet of rooftop space on the building ("Rooftop Space") (collectively, the "Premises"). The Premises are shown in detail on Exhibit "B" attached hereto and made a part hereof.

2. **INITIAL TERM.** This Agreement shall be effective as of the date of execution by both Parties ("Effective Date"). The initial term of the Agreement shall be for 5 years beginning on the first day of the month following the Commencement Date (as hereinafter defined). The "Commencement Date" shall be the first day of the month after LESSEE begins installation of LESSEE's communications equipment and will be acknowledged by the Parties in writing, including electronic mail.

3. **EXTENSIONS.** This Agreement shall automatically be extended for 4 additional 5 year terms unless Lessee terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least 3 months prior to the end of the then current term. The initial term and all extensions shall be collectively referred to herein as the "Term".

4. **RENTAL.**

a. Rental payments shall begin on the Commencement Date and be due at a total annual rental of \$_____, to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR at _____ **[Address]** or to such other person, firm, or place as LESSOR may, from time to time, designate in writing at least 30 days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. LESSOR and LESSEE acknowledge and agree that the initial rental payment shall not be delivered by LESSEE until 60 days after the Commencement Date. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of Lessee.

b. For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

5. ACCESS. LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation and maintenance of LESSEE's communications equipment. Without limitation, the Premises may include certain space within the building, on the roof of the building or elsewhere on the building sufficient for the installation, operation and maintenance of communications equipment. Notwithstanding anything to the contrary, the Premises shall include (1) such additional space necessary for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among the various portions of the Premises and to all necessary electrical, telephone, fiber and other similar support services located within the Property or the nearest public right of way, and (2) such additional space sufficient for LESSEE's radio frequency signage and/or barricades as are necessary to ensure LESSEE's compliance with Laws (as defined in Paragraph 30). In the event it is necessary, LESSOR agrees to grant LESSEE or the provider the right to install such services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by LESSOR.

6. CONDITION OF PROPERTY. LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's Use and clean and free of debris. LESSOR represents and warrants to LESSEE that as of the Effective Date, the structure of the building (including without limitation the roof, foundations, exterior walls), the common areas and all building systems (including, without limitation, the plumbing, electrical, ventilating, air conditioning, heating, and loading doors, if any) are (a) in good operating condition and free of any leakage; (b) in compliance with all Laws; and (c) in compliance with all EH&S Laws (as defined in Paragraph 27).

7. ELECTRICAL.

a. If permitted by the local utility company serving the Premises, LESSEE shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by LESSEE at the Premises and LESSEE shall pay the utility company directly.

b. If an electrical meter is not permitted, then LESSEE may furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by LESSEE at the Premises and shall pay the utility company directly if permitted by the utility company.

c. In the event a sub-meter is installed and the utility company will not permit LESSEE to pay the utility company directly, then the LESSOR shall read LESSEE's sub-meter on a monthly basis and provide LESSEE with an invoice for LESSEE's power consumption on an annual basis. Each invoice shall reflect charges only for LESSEE's power consumption based on the average kilowatt hour rate actually paid by LESSOR to the utility, without markup or profit.

d. All invoices for power consumption shall be sent by LESSOR to LESSEE at Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, and shall be provided to LESSEE within 90

days following the conclusion of each calendar year (otherwise, LESSOR waives the right to collect applicable electrical charges). Upon written request from LESSEE, LESSOR shall provide copies of electricity bills received by LESSOR during any period that LESSOR submits invoices to LESSEE for reimbursement and for that same period LESSOR shall provide documentation of the sub-meter readings applicable to such periods. LESSEE shall pay each invoice within 45 calendar days after receipt of the invoice from LESSOR.

e. LESSEE shall be permitted to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

8. IMPROVEMENTS. The communications equipment including, without limitation, antennas, conduits, and other improvements shall be at LESSEE's expense and installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its communications equipment, antennas, conduits or other improvements or any portion thereof and the frequencies over which the communications equipment operates, at no additional cost, whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit. LESSEE shall only be required to obtain LESSOR consent for modifications that require structural upgrades to the roof or that materially increase LESSEE's Premises, provided increases in total Rooftop Space of 10% or less shall not be considered material. LESSOR shall respond in writing to any LESSEE consent request within thirty (30) days of receipt or LESSOR's consent shall be deemed granted, provided, any material increase to the Interior Space shall be memorialized by the Parties in writing. LESSOR is not entitled to a rent increase associated with any LESSEE modification unless it is expanding its Interior Space or materially increasing its Rooftop Space, in which case, any rent increase shall be proportionate to the additional space included in the Premises description.

9. GOVERNMENT APPROVALS. LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities (collectively, the "Government Entities") as well as a satisfactory structural analysis of the building or other structure that will permit LESSEE's Use. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to LESSEE's Use.

10. TERMINATION. LESSEE may, unless otherwise stated, immediately terminate this Agreement upon written notice to LESSOR in the event that (i) any applications for such Government Approvals should be finally rejected; (ii) any Government Approval issued to LESSEE is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (iii) LESSEE determines that such Government Approvals may not be obtained in a timely manner; (iv) LESSEE determines any structural analysis is unsatisfactory; (v) LESSEE, in its sole discretion, determines the Use of the Premises is obsolete or unnecessary; (vi) with 3 months prior notice to LESSOR, upon the annual anniversary of the Commencement Date; or (viii) at any time before the Commencement Date for any reason or no reason in LESSEE's sole discretion.

11. MAINTENANCE. LESSEE will maintain LESSEE's communications equipment within the Premises in good condition, reasonable wear and tear and casualty damage excepted. LESSOR shall maintain, in good operating condition and repair, the structural elements of the building and the Premises,

and all building systems (including, but not limited to, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the common areas) and the common areas.

12. INDEMNIFICATION. Subject to Paragraph 13, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnify Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. The indemnified Party will provide the indemnifying Party with prompt, written notice of any claim covered by this indemnification; provided that any failure of the indemnified Party to provide any such notice, or to provide it promptly, shall not relieve the indemnifying Party from its indemnification obligation in respect of such claim, except to the extent the indemnifying Party can establish actual prejudice and direct damages as a result thereof. The indemnified Party will cooperate appropriately with the indemnifying Party in connection with the indemnifying Party's defense of such claim. The indemnifying Party shall defend any indemnified Party, at the indemnified Party's request, against any claim with counsel reasonably satisfactory to the indemnified Party. The indemnifying Party shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified Party.

13. INSURANCE. The Parties agree to maintain during the term of this Agreement the following insurance policies:

a. Commercial general liability on an occurrence form in the amount of \$2,000,000.00 per occurrence and \$4,000,000.00 in the annual aggregate for bodily injury and property damage. Each party shall be included as an additional insured on the other party's insurance policy.

b. "All-Risk" property insurance on a replacement cost basis insuring their respective property with no coinsurance requirement. Where legally permissible, each party agrees to waive subrogation against the other party and to ensure said waiver is recognized by the insurance policies insuring the property.

14. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 12 and 27, a violation of Paragraph 32, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

15. INTERFERENCE.

a. LESSEE agrees that LESSEE will not cause interference that is measurable in accordance with industry standards to LESSOR's equipment. LESSOR agrees that LESSOR and other occupants of the Property will not cause interference that is measurable in accordance with industry standards to the then existing equipment of LESSEE.

b. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to LESSEE'S Network

Operations Center (at (800) 224-6620/(800) 621-2622) or to LESSOR at (_____), the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured.

c. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

16. REMOVAL AT END OF TERM. Upon expiration or within 90 days of earlier termination, LESSEE shall remove LESSEE's Communications Equipment and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that the communications equipment shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LESSEE to remain on the Premises after termination of the Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

17. HOLDOVER. If upon expiration of the Term the Parties are negotiating a new lease or a lease extension, then this Agreement shall continue during such negotiations on a month to month basis at the rental in effect as of the date of the expiration of the Term. In the event that the Parties are not in the process of negotiating a new lease or lease extension and LESSEE holds over after the expiration or earlier termination of the Term, then Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed rental.

18. RIGHT OF FIRST REFUSAL. If at any time after the Effective Date, LESSOR receives an offer or letter of intent from any person or entity that is in the business of owning, managing or operating communications facilities or is in the business of acquiring landlord interests in agreements relating to communications facilities, to purchase fee title, an easement, a lease, a license, or any other interest in the Premises or any portion thereof or to acquire any interest in this Agreement, or an option for any of the foregoing, LESSOR shall provide written notice to LESSEE of said offer ("LESSOR's Notice"). LESSOR's Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, a description of the portion of and interest in the Premises and/or this Agreement which will be conveyed in the proposed transaction, and a copy of any letters of intent or form agreements presented to LESSOR by the third party offeror. LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the terms and conditions of such offer or by effectuating a transaction with substantially equivalent financial terms. If LESSEE fails to provide written notice to LESSOR that LESSEE intends to meet such bona fide offer within thirty (30) days after receipt of LESSOR's Notice, LESSOR may proceed with the proposed transaction in accordance with the terms and conditions of such third party offer, in which event this Agreement shall continue in full force and effect and the right of first refusal described in this paragraph shall survive any such conveyance to a third party. If LESSEE provides LESSOR with notice of LESSEE's intention to meet the third party offer within thirty (30) days after receipt of LESSOR's Notice, then if LESSOR's Notice describes a transaction involving greater space than the Premises, LESSEE may elect to proceed with a transaction covering only the Premises and the purchase price shall be prorated on a square footage basis. Further, LESSOR acknowledges and agrees that if LESSEE exercises this right of first refusal, LESSEE may require a reasonable period of time to conduct due diligence and effectuate the closing of a transaction on

substantially equivalent financial terms of the third party offer. LESSEE may elect to amend this Agreement to effectuate the proposed financial terms of the third party offer rather than acquiring fee simple title or an easement interest in the Premises. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale for which LESSEE has any right of first refusal.

19. RIGHTS UPON SALE. Should LESSOR, at any time during the Term, decide (i) to sell or otherwise transfer all or any part of the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder. In the event that LESSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Agreement whereby the third party agrees in writing to assume all obligations of LESSOR under this Agreement, then LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Agreement.

20. LESSOR'S TITLE. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the Effective Date and covenants during the Term that LESSOR has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easements, restrictions or other impediments of title that will adversely affect LESSEE's Use.

21. ASSIGNMENT. Without any approval or consent of the other Party, this Agreement may be sold, assigned or transferred by either Party to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. LESSEE may assign this Agreement to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization without approval or consent of LESSOR. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the other Party, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment hereunder.

22. RELOCATION.

In the event LESSOR desires to replace, relocate, modify, demolish, or in any way alter the Property in any manner likely to cause interference (as described in Paragraph 15) with the operation of LESSEE's communications equipment (each event, a "Project"), LESSOR shall have the right to cause LESSEE to temporarily or permanently relocate the communications equipment and/or utilities, as the case may be, subject to the terms and conditions set forth herein; provided, however, LESSOR shall accommodate LESSEE's continued uninterrupted use of temporary communications equipment throughout the Project. If LESSOR's Project requires Licensee to temporarily or permanently relocate its communications equipment from the Premises, LESSOR shall have the right to require LESSEE to relocate the communications equipment upon the following terms and conditions: (i) LESSOR shall deliver to LESSEE Notice of its Project, in accordance with Paragraph 23 below, at least one year in advance, unless the

Project is necessary to preserve the integrity and functionality of the Property, in which case the Parties may agree to a lesser notice period in writing; (ii) LESSOR shall identify a suitable alternate location on the Property ("Alternate Premises") that provides substantially similar signal coverage for the communications equipment as that of the Premises being relocated; (iii) unless the necessity for the Project results from the negligence or willful misconduct of LESSEE, all costs associated with such relocation will be performed exclusively by and at no cost to the LESSEE; and (iv) LESSEE must follow the jurisdiction's review and permitting requirements before installing the communications equipment at the Alternate Premises. LESSEE shall not be required to pay any additional application, review or other fees in connection with any relocation initiated by LESSOR.

23. NOTICES. Except for notices permitted via telephone in accordance with Paragraph 15 and notices permitted via electronic mail in accordance with Paragraph 2, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR:

LESSEE: _____
 d/b/a Verizon Wireless
 180 Washington Valley Road
 Bedminster, New Jersey 07921
 Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

24. SUBORDINATION AND NON-DISTURBANCE. Within 15 days of the Effective Date, LESSOR shall obtain a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the building, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the building, Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the

Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the building and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

25. DEFAULT. It is a "Default" if (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice, or (ii) LESSOR fails to comply with this Agreement and the failure interferes with LESSEE's Use and LESSOR does not remedy the failure within 5 days after written notice from LESSEE or, if the failure cannot reasonably be remedied in such time, if LESSOR does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 25 do not extend the period of time in which either Party has to cure interference pursuant to Paragraph 15 of this Agreement.

26. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under this Agreement until the full undisputed amount is fully reimbursed to LESSEE.

27. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

28. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs LESSEE's Use, rent shall abate until LESSEE'S Use is restored. If LESSEE's Use is not restored within 45 days, LESSEE may terminate this Agreement.

29. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs LESSEE's Use, Lessee may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs and, specifically excluding loss of LESSEE's leasehold interest, any other damages LESSEE may incur as a result of any such condemnation.

30. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (i) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and (ii) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

31. TAXES.

a. LESSOR shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on the LESSEE and required to be collected by the LESSOR based on any service, rental space, or equipment provided by the LESSOR to the LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on the LESSEE and required to be paid by the LESSEE that are directly attributable to the LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within 60 days after presentation of a received bill and/or assessment notice which is the basis for such taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

b. LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

32. NON-DISCLOSURE. The Parties agree this Agreement and any information exchanged between the Parties regarding the Agreement are confidential. The Parties agree not to provide copies

of this Agreement or any other confidential information to any third party without the prior written consent of the other or as required by law. If a disclosure is required by law, prior to disclosure, the Party shall notify the other Party and cooperate to take lawful steps to resist, narrow, or eliminate the need for that disclosure.

33. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

34. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed, interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. LESSOR agrees to execute a Memorandum of this Agreement, which LESSEE may record with the appropriate recording officer. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement.

[Signature page follows. The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

By: _____

Its: _____

Date: _____

LESSEE:

By: _____

Its: _____

Date: _____

WITNESS

WITNESS

EXHIBIT "A"

DESCRIPTION OF PROPERTY

EXHIBIT "B"
SITE PLAN OF PREMISES



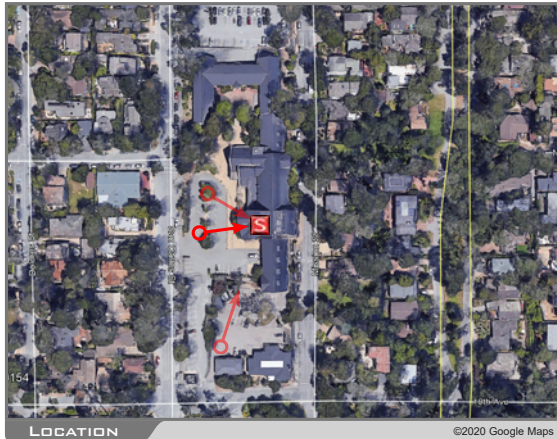


SOUTH CARMEL SUNSET CENTER

SAN CARLOS STREET CARMEL CA 93923



VIEW 1



LOCATION

©2020 Google Maps



EXISTING



PROPOSED

LOOKING EAST FROM SAN CARLOS STREET

ACCURACY OF PHOTO SIMULATION BASED UPON INFORMATION PROVIDED BY PROJECT APPLICANT.

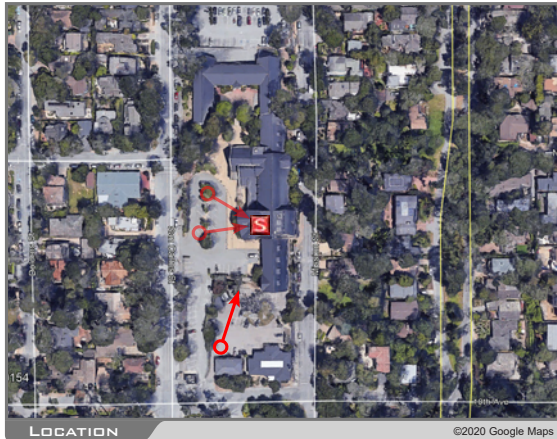


SOUTH CARMEL SUNSET CENTER

SAN CARLOS STREET CARMEL CA 93923



VIEW 2



LOCATION

©2020 Google Maps



EXISTING



PROPOSED

LOOKING NORTHEAST FROM 10TH AVENUE

ACCURACY OF PHOTO SIMULATION BASED UPON INFORMATION PROVIDED BY PROJECT APPLICANT.

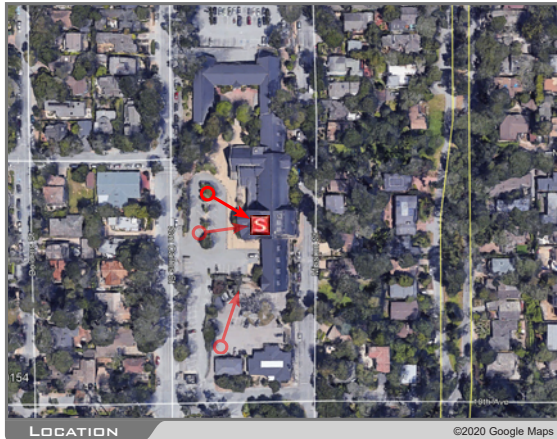


SOUTH CARMEL SUNSET CENTER

SAN CARLOS STREET CARMEL CA 93923



VIEW 3



LOCATION

©2020 Google Maps



EXISTING



PROPOSED

LOOKING SOUTHEAST FROM SAN CARLOS STREET

ACCURACY OF PHOTO SIMULATION BASED UPON INFORMATION PROVIDED BY PROJECT APPLICANT.



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Agnes Martelet, Manager, Environmental Compliance

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Presentation on the Years Two and Three Status Report for the North Dunes Habitat Restoration Project

RECOMMENDATION:

Receive a presentation from the Environmental Compliance Manager on the Years Two and Three Status Report for the North Dunes Habitat Restoration Project.

BACKGROUND/SUMMARY:

The North Dunes of Carmel-by-the-Sea include eight acres of an Environmentally Sensitive Habitat Area. The white sands and native vegetation of the North Dunes have been significantly impacted over past decades by uncontrolled public access and invasive, non-native species, including trees, ground cover, and landscape plantings. To protect and restore this irreplaceable dune habitat, the City adopted and began to implement the North Dunes Habitat Restoration Project (Project) starting in October 2016.

This presentation will review highlights of a report, entitled “*North Dunes Restoration Annual Report, Year Two, 2017/18 and Year Three, 2018/19*,” that was prepared by the City’s consultant, Joey Dorrell-Canepa, Dune Biologist with Native Solutions. This technical report summarizes activities for fiscal year 2017/18 and 2018/19 and is available on the City’s website at <https://ci.carmel.ca.us/post/north-dunes>. The presentation will include a discussion of project goals, restoration actions by the consultant, volunteers, and City staff, monitoring results, ongoing challenges, and successes.

Staff provided this presentation to the Forest and Beach Commission in February 2020 and to the Planning Commission in August 2020.

FISCAL IMPACT:

This Project was de-funded this fiscal year due to the impacts of the COVID-19 Pandemic on the City’s revenue. However, with the support of many volunteers, including Joey Dorrell-Canepa, the Carmel-by-the-Sea Garden Club, and the Pebble Ridge Vineyard crews, restoration maintenance activities, such as weed abatement, have proceeded.

PRIOR CITY COUNCIL ACTION:

None associated with this technical report.

ATTACHMENTS:



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

**October 6, 2020
ORDERS OF BUSINESS**

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Agnes Martelet, Manager, Environmental Compliance
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2020-072 approving applications for Per Capita Grant Funds

RECOMMENDATION:

Adopt Resolution 2020-072 approving applications for Per Capita Grant Funds and directing staff to pursue the North Dunes Boardwalk Extension project.

BACKGROUND/SUMMARY:

In July 2020, the California Department of Parks and Recreation announced the availability of nearly \$200 million for more than 700 California agencies under the Proposition 68 Per Capita Grant Program. This non-competitive grant program provides funding to local government agencies to support the rehabilitation, creation and improvement of local parks and to address deficiencies in neighborhoods lacking access to outdoor recreation facilities.

Under this grant program, the City of Carmel-by-the-Sea is eligible to be reimbursed up to \$177,952 for any City park improvement project as long as the City submits the application by December 31, 2021 and completes the project by December 31, 2023. Submitting the attached resolution is one requirement of the application package. The City would be required to contribute a match of 20% of total project costs (\$44,488); however, staff hours on this project and volunteer labor hours on related, parks-oriented tasks, would qualify for the match.

Projects must be for capital outlay such as for acquisition of land, or improvements to existing property beyond its original condition. Operation, maintenance and repairs are not eligible. City staff considered several potential projects for this grant funding, including reviewing the 5-Year Capital Improvement Plan, remaining work at the North Dunes Restoration Project, Mission Trail Nature Preserve Stream Stability projects, Scenic Pathway repairs, and the Forest Hill Park stream channel realignment project. Based on the grant program guidelines, and funding and schedule constraints, Public Works determined that one of the following two projects could be completed with the allocated funding.

Project 1: North Dunes Boardwalk Extension

Project 1 would include planning, design, permitting, bidding, and construction of a new boardwalk extension connecting the Del Mar parking lot north to the Fourth Avenue boardwalk. This boardwalk

extension would improve access to the North Dunes, reduce sand erosion, and eliminate trampling of restoration areas. The proposed boardwalk would be consistent with the recommendations of the Del Mar Master Plan and North Dunes Restoration Plan. The last boardwalk section was from Fourth Avenue west to the beach and was completed in 2015. The City's coastal development permit is up for renewal next year making it an opportune time to include this proposed boardwalk extension. Potential bid additives could be included for interpretive signage should the bids be favorable.

Project 2: Mission Trail Drainage and Access Improvements

Project 2 would include design, permitting, bidding, and implementation of three (3) smaller drainage and access improvements as outlined in the Mission Trail Stream Stability Study. These projects would improve drainage at the Rio Road entrance of the Preserve by raising the Serra Trail by 6 inches where ponding currently occurs, modifying site drainage to minimize erosion, and constructing a Willow Trail boardwalk over a bog to provide safe pedestrian access during the winter months. These three projects would make good progress towards a total of eight (8) essential projects recommended in the Stream Stability Study. If project costs increase during design or bidding, we could still proceed with the remaining projects. While the cost estimate for these three projects is in line with the available funding, the environmental review and permitting process could cause delays.

In response to an article about this grant funding in the City Administrator's Friday Letter on July 31, 2020, staff received two responses both recommending using the grant funds to continue making progress in the North Dunes. Based on all issues presented above, Staff recommends that Council pursues the North Dunes Boardwalk Extension Project 1.

FISCAL IMPACT:

Both the North Dunes Habitat Restoration Project and Mission Trail Nature Preserve Restoration Project were defunded capital improvement projects for Fiscal Year 2020/21 due to the significant revenue impacts of COVID-19 on the City's budget. However, with the support of many volunteers, restoration maintenance activities such as weed abatement and trail improvements have proceeded.

Once the City's application for grant funding is approved, a budget adjustment would require City Council approval and the funding would be added to the selected project account.

PRIOR CITY COUNCIL ACTION:

None

ATTACHMENTS:

Attachment #1 - Resolution 2020-072 Per Capita Grant

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-072

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
APPROVING APPLICATIONS FOR PER CAPITA GRANT FUNDS AND DIRECTING STAFF
TO PURSUE THE NORTH DUNES BOARDWALK EXTENSION PROJECT**

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing applications; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project applications before submission of said applications to the State; and

WHEREAS, the City of Carmel-by-the-Sea intends to apply for Per Capita Grant funds and, as grantee, will enter into a contract with the State of California to complete each project that grant funding will be utilized for.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA DOES HEREBY:**

Approve the filing of project applications for Per Capita program grant projects; and

Certify that the City of Carmel-by-the-Sea has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the projects; and

Certify that the City of Carmel-by-the-Sea has or will have sufficient funds to operate and maintain the projects, and

Certify that all projects proposed will be consistent with the coastal access and recreation element of the City's General Plan (PRC §80063(a)), and

Certify that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and

Certify that the City of Carmel-by-the-Sea will comply with the provisions of §1771.5 of the State Labor Code, and

(PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the City will consider a range of actions that include, but are not limited to, the following:

- (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.

- (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
- (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
- (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.
- (E) Expanding the use of multilingual and culturally-appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
- (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
- (G) Identifying possible staff liaisons to diverse populations.

Agree that to the extent practicable, the projects will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).

Certify that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).

Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and

Delegate the authority to the City Administrator, or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scopes; and

Agree to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
this 6th day of October, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Robin Scattini, Finance Manager

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: FY 2020-2021 Budget Status Update

RECOMMENDATION:

Receive a budget status update on Fiscal Year 2020-2021

BACKGROUND/SUMMARY:

Revenue

The City's top three revenue sources are property taxes, sales and use taxes, and transient occupancy taxes. Historically, those revenue sources start being received in the second quarter. The City receives its first tranche of secured property tax in January as the first installment of property taxes for homeowners are due on December 10 (the second installment is due by April 10 and the City receives this payment typically in late May). Sales and use revenues are received on a quarterly basis. Therefore, there are not any values to present at this time. Transient occupancy tax is received bi-monthly. Transient occupancy taxes for the reporting period of July and August 2020 are due to be postmarked by September 30, 2020. As of September 22, \$169,264 has been received. Typically, hostleries pay utilizing the postmark date. Therefore, the large majority of payments will be received during the first week of October and the 7% receipt of budget is not yet cause for concern. For July through the third week of September, revenue for Charges for Services has been received in the amount of \$381,810. This is 18% of budget and is tracking on target. As is Other Revenue (which includes Business License Renewals), with receipts in the amount of \$569,552 and 24% of budget.

Revenue	Adopted Budget	7/1 – 9/22/20 Receipts	% Received
Property Taxes	\$6,822,304	\$48,504	1%
State Sales Tax (including public safety)	\$1,896,796	\$1,020	0%
Local Sales Tax – Measure C	\$3,050,000	\$0	0%
Transient Occupancy Tax	\$2,488,198	\$169,264	7%
Charges for Services	\$2,080,159	\$381,810	18%
Other	\$2,414,656	\$569,552	24%
Total	\$18,752,113	\$1,170,150	6%

At future Council meetings, Finance staff will provide additional budget status updates that will review the amount of revenue received in comparison to budgeted revenue, as well as provide discussion of any significant anticipated changes to budgeted revenue.

Expenditures

The City's largest expenditure category is salaries and benefits, which account for 49% of the FY 20/21 operating budget. For July through September, the salaries and benefits expenditures (inclusive of the annual Worker's Compensation premium) total \$2,635,801. This is 28% of the total budgeted salaries and benefits and is tracking on target. The July – September unfunded pension liability (UAL) payments have been made and total \$393,542. This is 25% of the total budgeted UAL and is tracking on target. For July through the third week of September, the services and supplies expenditures total \$1,358,237. This is 18% of the total budgeted services and supplies and is tracking on target. Overall, from July 1 – September 22, expenditures total \$4,387,580. This is 22% of the total budgeted expenditures and is tracking on target.

Expense	Adopted Budget	7/1 – 9/22/20 Expenditures	% Expended
Salaries/Benefits	\$9,545,869	\$2,635,801	28%
PERS UAL	\$1,598,574	\$393,542	25%
Services/Supplies	\$7,388,349	\$1,358,237	18%
Debt Service	\$1,244,515	\$0	0%
Total	\$19,777,307	\$4,387,580	22%

At future Council meetings, Finance staff will provide additional budget status updates that will review the amount of expenses incurred in comparison to budgeted expenses, as well as provide discussion of any significant anticipated changes to budgeted expenses.

FISCAL IMPACT:

None for this item.

PRIOR CITY COUNCIL ACTION:

Council received a FY 2020-2021 budget status update at its September 1 regular meeting.

ATTACHMENTS:



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

October 6, 2020
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Robert Harary, P.E, Director of Public Works
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Consideration of an Appeal (Stepanek) of a decision made by the Forest and Beach Commission of August 20, 2020 for penalties to be paid for damage to the Urban Forest and approval of the removal of cypress tree #2

RECOMMENDATION:

Uphold the August 20, 2020 ruling of the Forest and Beach Commission, assess a penalty of \$50,000 for damage to the urban forest, in addition to other mitigation measures, and authorize removal of the neighboring Cypress Tree #2.

BACKGROUND/SUMMARY:

The lot at Guadalupe 4 Northeast of Third Avenue is owned by Jaroslav Stepanek who is a local, licensed general building contractor since 1996. Mr. Stepanek received a Building Permit #18-608 which authorized him to demolish the existing house and separate garage structure and construct a new house. Demolition was complete, and Mr. Stepanek and his subcontractor were excavating for the foundation and footings of the new house.

On August 6, 2020, a Stop Work Order (SWO) (Attachment #1) was issued by the City Forester for violations of Municipal Code 17.48.110. Excavation and grading operations caused root damage to varying degrees for most of the trees on the lot. One Oak Tree (Tree #4 in the site plan, Attachment #1) on the east side of the parcel was in active failure mode and targeting the neighboring property. This tree was ordered by the City Forester to be removed immediately, and that was accomplished by Mr. Stepanek.

Tree #2 is a Cypress Tree shown on the site plan (Attachment #2), and is located on the property of Mo and Faye Massoudi, the neighbors to the south.

Consulting Arborist Glenn Whitlock-Reeve from West Coast Arborists (WCA) was contacted to prepare an independent Arborist Report regarding damage to the remaining trees on the lot and to provide his recommendations. Mr. Witlock-Reeve is a Board Certified Master Arborist and an International Society of Arboriculture's (ISA) Qualified Tree Risk Assessor.

Mr. Whitlock-Reeve wrote in his Report, entitled "*Guadalupe 4 NE of 3rd, Construction Impact Report*,"

dated August 13, 2020 (WCA Report, Attachment #3) the following observations about the remaining trees:

*"A total of 8 trees and 1 stump were present on the property, including 1-Monterey Cypress (*Hesperocyparis macrocarpa*), 3 Privet Trees (*Ligustrum confusum*) and 3 Coast Live Oaks (*Quercus agrifolia*).*

*Tree #5 is a multi-stem Coast Live Oak that was considered 1-tree for purposes explained later in this report. Excavation on site appears to have consisted of a complete tear down of a house for a complete house rebuild. **Excavation was as deep as 3-feet within 2-feet of established trees on site. Large roots up to 6-inches could be seen broken in the excavated walls. Root zone disturbances accounted for as much as 50% of 3-trees on site and resulted in an emergency removal of a tree uprooting from root loss (Tree #4).** [Emphasis added]*

Tree #1 a large and healthy Coast Live Oak did not have any visible evidence of excavation within the immediate root zone. A large 6-foot tall pile of soil is present east of the tree within the dripline. Dead branches up to 2-inches were noted within the canopy and power lines are present above the tree.

Tree #2 a large Monterey Cypress near 100-feet tall sustained substantial root zone damage on the northern side of the tree. The trunk has a lean and the canopy is heavy to the west. The south side of the tree appears to have had grade changes that may have resulted in root loss in the past depending on when the house at Guadalupe 3NE of 3rd was built. The foliage had minimal dead tissue and no pests or disease were visible.

Tree #3 a relatively small Coast Live Oak is present with the eastern dripline of Tree #4. Excavation was present 6-feet to the north of the trunk, but minimal impact from construction is suspected. The tree was noted for having a sparse canopy.

Tree #4 was reported to have been cut down because cut roots caused the tree to begin to fail to the east on an adjacent house. As much as 50% of the trees root zone had been removed during excavation and roots up to 4-inches could be seen severed in the bank wall.

Tree #5 is a multi-stem oak consisting of 4-large leaders. Any roots that may have been present on the southern side of the tree have been removed. A large broken root that had been broken by force was visible on below Leader "C". Leader "B" Could be seen resting on the roof of the cottage/shed in the back yard of Guadalupe 5NE of 3rd. Leader C was within 2-feet of the roof as well. The grouping of trees displayed health canopies with minimal signs of pests or diseases."

Based on site reviews and the information provided in the Whitlock-Reeve report, the City Forester concluded that **excavation within 15 feet of the trunks of trees 1, 2, 3, 4, and 5 was not performed by hand digging as required by the conditions of the building permit** and as noted on the first page of the construction plans. Further, the required mulch was not installed on any tree prior to excavation. **[Emphasis added]**

Forest and Beach Commission Public Hearing of August 20, 2020

Forest and Beach Commissioners were provided photos of the site (Attachment #3, pages 12-17, Attachment #4, Attachment #6, pages 6-14, and Attachment #8, pages 2-9). A formal tour of inspection by all Commissioners was not performed at the same time due to COVID-19. However, all Commissioners

were invited to visit the site on their own or with the City Forester. Commissioners Mosley and Myers visited the site with the City Forester. Commissioner Berling visited the site alone. Commissioner Saroyan did not visit the site but recused himself at the Commission meeting.

At the August 20, 2020 Forest and Beach Commission Special Meeting, the Commission received the following evidence and testimony:

- City Forester staff report (Attachment #5) and verbal summary
- Site visit and/or photographs in Attachments #3, #4, and #8)
- WCA report (Attachment #3)
- Testimony from Mr. Stepanek (about 4 minutes), Mr. Clayton the grading contractor (6 minutes), and Mr. Justin Ono, arborist for Stepanek (4 minutes)
- Construction Impact Assessment report from Arborist hired by Mr. Stepanek, Justin Ono, dated August 10, 2020 (Attachment #6). Note - tree numbers used in his report are different then the tree numbers used in all other attachments.
- Letter from Sonia Lessard, neighbor to the east, dated August 12, 2020, supporting the removal of Tree #4 (Attachment #7)
- Letter from Massoudi to Commissioners, dated August 14, 2020 (Attachment #8)
- Email from David Refuerzo, dated August 19, 2020, expressing concern that the contractor did not follow proper protocols related to tree protection and excavation (Attachment #9)
- Public testimony from Mo Massoudi (7 minutes - exceeding the 3 minute limit allowed by Commission Chair Caddell due to the impacts to his Cypress Tree #2), and from Faye Massoudi, Karen Ferlito, and Jason Clayton

Commissioner Mosely left the meeting during deliberations. The remaining Commissioners Caddell, Meyers, and Berling, ruled on the following mitigation measures and penalties:

1. Pay a fine of \$50,000 for damage caused to the urban forest
2. Pay the appraised value of Tree #4 of \$6,200 to the City's Reforestation Fund
3. Deposit a \$17,800 bond to ensure the survival of trees 5A, 5B, 5C, and 5D for five years
4. Pay for removal and stump grinding of Cypress Tree #2 if removal is desired by the Massoudis
5. Reimburse the City for the actual cost of the WCA Arborist Report
6. Submit a landscape plan with 75% native plant material, including trees and vegetation enhancements to the public right of way, for the City Forester's approval

A summary of these mitigation measures and penalties imposed by the Commission were sent via letter, dated August 25, 2020, from the City Forester to Mr. Stepanek (Attachment #10). Minutes of the Meeting (not yet approved) are provided in Attachment #11.

The first three requirements have been fulfilled, and the SWO (Attachment #1) was lifted allowing construction to resume. However, the latter three requirements must be fulfilled prior to building occupancy.

Appeal to the City Council and Staff Responses

The following section pertains to the letter of Appeal, dated September 14, 2020, from Mr. Alex Lorca, attorney with Fenton & Keller (Attachment #12). Following each allegation from this letter are staff's responses and/or clarifications.

Section I The Project

Allegations:

- Section I.A: On page 3 of Attachment #12, there are two site plans, the first showing the prior conditions with the now demolished house and garage, and the second plan shows the new house under construction. The bottom right of both site plans has a note pointing to “Cypress Tree” (Tree #2). It should be noted that these site plans correctly show that the trunk of this **Cypress Tree #2 is located on the neighbor’s property** to the south (Massoudi).
- On page 4, first paragraph, there is **zero evidence** to support the petitioner’s claim that “*excavation by hand within six feet of the Cypress Tree (Tree #2) and the (now removed) Oak Tree (Tree #4) as required by the City.*”
- On page 4, Forester Sara Davis was not present at the Project Site daily. Her first visit to the site was on August 6, 2020 at which time the Stop Work Order was issued (Attachment #1). Further, the City Forester in no manner “*supervised the entire process.*” Mr. Stepanek is a licensed general building contractor and is responsible for all construction activity that occurred on that parcel.
- On page 4, second paragraph, the letter alleges that only one root was cut, and that that one root was cut by the City Forester. As shown in the various photographs in Attachments #3, #4, #6, and #8, many roots of all different sizes were cut by the excavators.
- On page 4, the presence of the prior garage did not prevent roots from the Cypress Tree #2 to grow underneath the prior garage foundation slab. Tree roots are known to grow under and around impediments.
- On page 4, third paragraph and photograph, this photograph does show that there are no exposed roots. However, before this photo was taken, tree roots were cut by an excavator. The edge (wall) of soil appears to have been cleaned up cosmetically for this after photo.
- Sections I-B and I-C: Pages 5 and 6 include accusations against the neighbor, Massoudis. Please refer to the neighbor’s letter to the Forest and Beach Commission (Attachment #8). The City’s policy is to not interfere with civil disputes between neighbors.

Section II The Forest and Beach Commission Hearing

Section II, page 7, Allegation:

- In the second paragraph, testimony from Mr. Stepanek was about 4 minutes long, Mr. Clayton the grading contractor (6 minutes), and Mr. Ono, arborist for Stepanek (4 minutes). The video of this meeting is available via the City’s website. <https://carmel.novusagenda.com/agendapublic/VODPreview.aspx?meetingVideoID=79fb3d57-200d-4684-83c3-f4dfff1ad8b0&index=10927>

Section II-A, page 7, Allegation: *The Commission Failed to Use the Required Criteria Tree Removal*

- No actions were taken by the Commission at their September 10, 2020 meeting, and the meeting minutes of August 20, 2020 were not adopted. Draft meeting minutes for the August 20, 2020 meeting are provided in Attachment #11.
- The Commission did consider all required criteria for tree removal, as well as for all mitigation measures and penalties imposed, including review of the City Forester’s written and oral reports, site visits, two arborist reports, photographs, testimony by the petitioner and his contractors, public

testimony, and written public comments.

Section II-B. Allegation: *The Commission's Action were Motivated by Politics*

- On page 7, the Commission did consider all required criteria for tree removal, as well as for all mitigation measures and penalties imposed, including review of the City Forester's written and oral reports, site visits, two arborist reports, photographs, testimony by the petitioner and his contractors, public testimony, and written public comments.
- Commissioner Saroyan recused himself from the Public Hearing due to his relationship with the neighboring property owner.
- While it is true that Mr. Massoudi was previously on the Commission, his written and verbal testimony at the meeting centered around the damage to Cypress Tree #2 which is on his property and which the City Forester and WCA report recommended removal due to potential instability due to the roots cut by Mr. Stepanek's grading contractor.

Section III The Appeal (Attachment #12)

Section III-B. Allegation: *A Site Visit is Required to Fully Understand the Project*

- On page 8, Forest and Beach Commissioner were provided photos of the site (Attachments #3, #4, #6, and #8). Due to the COVID-19 Pandemic, a formal tour was not performed, but all Commissioners were invited to visit the site on their own or with the City Forester. Commissioners Mosley and Myers visited the site with the City Forester. Commissioner Berling visited the site alone.

Section III-C Allegation: *The City's General Plan Directs the Preservation of Trees*

- On page 8, paragraph 4, the Commission did consider all required criteria for tree removal, as well as for all mitigation measures and penalties imposed, including review of the City Forester's written and oral reports, two arborist reports, site visits, photographs, testimony by the petitioner and his contractors, public testimony, and written public comments.

Section III-D Allegation: *Removal of the Cypress Tree is Prohibited under the City's Forest Management Plan*

- On page 9, second paragraph, Mr. Frank Ono is a respected arborist, but he is not an ISA Board Certified Master Arborist (BCMA) as indicated in the Appeal letter. Mr. Frank Ono's report of August 31, 2020, attached to the appeal letter #12, was limited to a tree hazard assessment of Cypress Tree #2.

The WCA Report was written by Glenn Whitlock-Reeve who is a BCMA. This credential is described by the ISA thusly: *"The ISA Board Certified Master Arborist® credential is the highest level of certification offered by ISA. This credential recognizes ISA Certified Arborists® who have reached the pinnacle of their profession. In addition to passing an extensive scenario-based exam, candidates must abide by a Code of Ethics, which ensures quality of work. Fewer than two percent of all ISA Certified Arborists® currently hold this certification."*

Section III-D Criteria Table, Allegations

- SAFETY - Page 9

- In the WCA Report, Attachment #3, Mr. Whitlock-Reeve found root failure to be possible, with a high rating for the likelihood of impacting a target (neighbor's house), and the consequences of a root failure to be "Significant." Mr. Whitlock-Reeve does admit that "*the tree could be retained.*" The use of the word "could" means that retention is a possibility if additional crown reduction/pruning, possible anchoring, and ongoing monitoring occur. However, his recommendation on page 9 of the WCA Report is that Cypress Tree #2 should be removed.

- HEALTH

- All agree that there are no pests or diseases on Cypress Tree #2. However, the tree was "Significantly" damaged by the excavation equipment and should be removed as recommended on page 9 of the WCA Report and by the City Forester.

- CONSTRUCTION IMPACTS - Page 10

- It is industry best management practice that the Critical Root Zone (CRZ) is one foot per every inch of trunk diameter. Cypress Tree's #2 CRZ is a circle with a radius of 35 feet from the trunk. Although we suspect that no large diameter roots were encountered during excavation, a significant percentage of the CRZ was disrupted.
- The City Forester has determined that the small amount of area gained from the garage demolition and increased setback to the new house does not outweigh the amount of root disruption that occurred during excavation.

- TREE DENSITY

- In the second paragraph, the subject Cypress Tree #2 is an upper canopy tree, but it is not on the Project Site, it is on the neighbor's property. There are no other upper canopy trees on the Project Site.

- OTHER TREE AFFECTS - Page 10

- Typical annual prevailing wind direction is from the North West. Considering the limitations on the root zone and the root damage, Cypress Tree #2 could potentially fail on any of five structures.

- PROPERTY DAMAGE - Page 11

- The statement that the Cypress Tree #2 will not cause property damage in the future does not take into consideration even the most basic principles of arboriculture. All trees have the potential to cause damage property.

- NEW CONSTRUCTION

- The City Forester has determined that the small amount of area gained from the garage demolition and increased setback to the new house does not outweigh the amount of root disruption that occurred during excavation.

- Section III-E - 1 On page 11, the penalties and mitigation measures imposed were neither arbitrary nor capricious. In the WCA Report (Attachment #3), page 7 provides the appraised values of all trees damaged during excavation. The total value for the trees damaged is \$45,300. On page 20 of Attachment #3, the calculation methodology for the value of Cypress Tree #2 of \$10,300 is shown.

Further, in the Justin Ono report, Attachment #6, page 16, Tree #1 in this report is the same as Tree #4 in the WCA Report (Attachment #3). Mr. Justin Ono, who is a BCMA, appraised the value of the Coast Live Oak tree using the same calculation methodology and arrived at \$6,200 which is the same amount, \$6,200, assessed by Mr. Whitlock-Reeves.

- The Forest and Beach Commission previously levied a \$50,000 penalty for extensive damage to all trees on a different lot that was also excavated using an excavator, versus hand digging. Additional mitigation measures and fees were assessed for that other site as well. The penalties were paid and not contested.
- Although it was recommended by the City Forester, the Commission did not rule to charge three time “3X” the appraised value of Tree #4. See the summary letter of the Commission requirements from the City Forester to Mr. Stepanek in Attachment #10.
- Page 12 - It is very common for trees to deviate from perpendicular as they are living organisms. Most deviations from perpendicular in Carmel-by-the-Sea are caused by phototropism. Phototropism is the tree growing towards a light source. In Tree #4’s case, the tree was in the process of actually falling over because while the tree was previously leaning to the east, the roots of the tree were detached from the soil during excavation. Regardless of a previous lean, the tree was in active failure when it was ordered to be removed.

Section III-E-2 Allegation: *The \$50,000 Penalty is Outrageous*

- Page 12 - In the WCA Report (Attachment #3), page 7 provides the appraised values of all trees damaged during excavation. The total value for the trees damaged is \$45,300. On page 20 of Attachment #3, the calculation methodology for the value of Tree #2 of \$10,300 is shown.
- The Forest and Beach Commission previously levied a \$50,000 penalty for extensive damage to all trees on a different lot that was excavated using an excavator, versus hand digging. Additional mitigation measures and fees were assessed for that other site as well. The penalties were paid and not contested.

Section IV Conclusion

- Based upon the WCA Report by Mr. Witlock-Reeve, dated August 13, 2020 (Attachment #3, page 9), Cypress Tree #2 should be removed for safety reasons.
- In regard to the \$50,000 penalty, page 7 of Attachment #3 provides the appraised values of the trees damaged. The sum is \$45,300. Thus, the \$50,000 penalty for damage to the urban forest is reasonable and supported by the evidence.
- The City Council should confirm the decision of the Forest and Beach Commission, including all mitigation measures and penalties, and deny the appeal by Mr. Stepanek.

FISCAL IMPACT:

If the City Council confirms the decision of the Forest and Beach Commission, including all mitigation measures and penalties, and denies the appeal by Mr. Stepanek, the following would be provided from the appellant to the City:

1. A fine of \$50,000 for damage caused to the urban forest
2. Appraised value of Tree #4 of \$6,200 to the City's Reforestation Fund
3. A \$17,800 bond to ensure survival of Trees 5A, 5B, 5C, and 5D for five years
4. Reimburse Massoudi's for cost to remove and stump grind Cypress Tree #2
5. Reimburse the City for the actual cost of the WCA Arborist Report when cost is known

Note: Mr. Stepanek has already provided the first three items above to the City.

PRIOR CITY COUNCIL ACTION:

None.

ATTACHMENTS:

Attachment #1 - Stop Work Order, August 6, 2020
Attachment #2 - Site Plans Stepanek
Attachment #3 - Arborist Glenn Whitlock-Reeve (WCA) Report, August 13, 2020
Attachment #4 - Photos taken during excavation
Attachment #5 - City Forester Staff Report to Forest and Beach Commission
Attachment #6 - Arborist Justin Ono Report, August 10, 2020
Attachment #7 - Letter from Neighbor Sonia Lessard, August 12, 2020
Attachment #8 - Letter from Neighbors Mo and Faye Massoudi, August 14, 2020
Attachment #9 - Letter from David Refuerzo, August 19, 2020
Attachment #10 - Summary of Forest and Beach Commission Findings letter, August 25, 2020
Attachment #11 - Draft Minutes of the Forest and Beach Commission Meeting of August 20, 2020
Attachment #12 - Letter of Appeal from Alex Lorca, Attorney with Fenton and Keller, September 14, 2020, including Hazardous Tree Assessment for Cypress Tree #2 by Arborist Frank Ono, August 31, 2020



City of Carmel-By-The-Sea
Community Planning and Building Department
PO Box CC
Carmel-By-The-Sea, CA 93921

STOP WORK ORDER

Location: GUADALUPE 4 NE OF 3RD
 APN#: 010.022.013.000 Lot: _____ Block: _____
 Owner Name: JARSOLAV STEPANEK Phone: 831.415.2730
 Contractor Name: _____ Phone: _____
 Site Contact Name
 (if different from above): _____ Phone: _____

Work has been done:

☐ Without a permit

☐ Beyond the scope of a permit

☒ Without proper authorization

☐ Without a required inspection

Description of Violation: OF MUNICIPAL CODE 17.48.110

Required corrective action: APPEAR BEFORE THE FOREST AND BEACH COMMISSION

The work on this site, described above, has been determined to be in violation of Chapter 15.04.070 and/or 17.02.080 of the Carmel Municipal Code. No further work shall be performed until the violation(s) noted have been corrected and resumption of work is authorized by the Building Official. Unauthorized removal of this notice, or failure to comply with this order, shall be considered an infraction punishable upon conviction by fines and/or imprisonment as prescribed by law.

**CONTACT THE COMMUNITY PLANNING AND BUILDING DEPARTMENT IMMEDIATELY AT
831-620-2010 FOR MORE INFORMATION**

Posted by: S DAVIS Date: 8-6-2020 Time: 3:02

DO NOT REMOVE THIS NOTICE UNDER PENALTY OF LAW



Cypress tree

ARBORIST REPORT

Guadalupe 4 NE of 3rd

Construction Impact Report

Submitted to:

Sara Davis
City Forester
P.O. Box CC
Carmel by the Sea
CA 9329

August 13, 2020



Tree Care Professionals Serving Communities Who Care about Trees www.WCAINC.com

Prepared by:

Glenn O. Whitlock-Reeve

REGISTERED CONSULTING ARBORIST #704 | BOARD CERTIFIED MASTER ARBORIST WE-10177BTM
390 MARTIN AVE SANTA CLARA, CA 95050 - (408) 835-0438 - GREEVE@WCAINC.COM





Guadalupe 4NE of 3rd – August 13, 2020

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West Coast Arborists, Inc.

390 Martin Avenue Santa Clara, CA 95050 (408) 855-8660



Summary

West Coast Arborists Inc. is contracted by the City of Carmel-by-the-Sea for arborist services. I was requested to assess trees impacted by construction at Guadalupe 4NE of 3rd, by the city forester Sara Davis. The assessment was requested to include a risk assessment and appraisal of trees most impacted by construction. 8 trees and 1-stump were included in the assessment, 3-trees/stems were determined to have a significant to severe impact from construction and will require extensive trimming, support systems if retained. The seven trees/stems were appraised for their value and the **assignment result**¹ total value was \$45,300.00. Risk assessment of affected trees determined that 4 of the trees/stems pose a high risk to surrounding property/people.

Background

West Coast Arborists Inc. (WCA) was contacted by the City of Carmel-by-the-Sea's forester Sara Davis for arborist services in August of 2020. Ms. Davis requested I assess established trees at Dolores 7 SW of 13th, that had been impacted by construction. I visited the site on August 12, 2020 and have included my findings as follows.

Assignment

The City of Carmel-by-the-Sea has contracted West Coast Arborists Inc. to perform the following services.

1. Visit the site and perform a general tree condition and observation report.
2. Provide an estimated value for trees that display signs of significant-severe root damage.
3. Provide a risk assessment of established trees on the site.
4. Summarize findings in a formal report.

Limitations of assignment

My assessment is limited to what was visible at grade level on the day of my assessment and information provided to me by the city. Diameters of trees was measured using a D-Tape when no obstructions were present, diameters of trees with tree protection boards were estimated by measuring across the long side of the trunk visible through the boards. Tree #4's Diameter was provided by the City Forester.

¹ Terms in **Bold** are defined in the glossary.

Observations

A total of 8 trees and 1 Stump were present on the property, including 1-Monterey Cypress (*Hesperocyparis macrocarpa*), 3 Privet Trees (*Ligustrum confusum*) and 3-Coast Live Oaks (*Quercus agrifolia*). Tree #5 is a multi-stem Coast Live Oak that was considered 1-tree for purposes explained later in this report. Excavation on site appears to have consisted of a complete tear down of a house for a complete house rebuild. Excavation was as deep as 3-feet within 2-feet of established trees on site. Large roots up to 6-inches could be seen broken in the excavated walls. Root zone disturbances accounted for as much as 50% of 3-trees on site and resulted in an emergency removal of a tree uprooting from root loss (Tree #4).

Tree #1 a large and healthy Coast Live oak did not have any visible evidence of excavation within the immediate root zone. A large pile 6-foot tall pile of soil is present east of the tree within the dripline. Dead branches up to 2-inches were noted within the canopy and power lines are present above the tree.

Tree #2 a large Monterey Cypress near 100-feet tall sustained substantial root zone damage on the northern side of the tree. The trunk has a lean and the canopy is heavy to the west. The south side of the tree appears to have had grade changes that may have resulted in root loss in the past depending on when the house at Guadalupe 3NE of 3rd was built. The foliage had minimal dead tissue and no pests or disease were visible.

Tree #3 a relatively small Coast Live Oak is present with the eastern dripline of Tree #4. Excavation was present 6-feet to the north of the trunk, but minimal impact from construction is suspected. The tree was noted for having a sparse canopy.

Tree #4 was reported to have been cut down because cut roots caused the tree to begin to fail to the east on an adjacent house. As much as 50% of the trees root zone had been removed during excavation and roots up to 4-inches could be seen severed in the bank wall.

Tree #5 is a multi-stem oak consisting of 4-large leaders. Any roots that may have been present on the southern side of the tree have been removed. A large broken root that had been broke by force was visible on below Leader "C". Leader "B" Could be seen resting on the roof of the cottage/shed in the back yard of Guadalupe 5NE of 3rd. Leader C was with in 2-feet of the roof as well. The grouping of trees displayed health canopies with minimal sings of pests or diseases.



Guadalupe 4NE of 3rd – August 13, 2020

CONSTRUCTION IMPACT

A total of 8 trees were noted on the property or near the property line. Excavation is believed to have had minor to severe impact to all trees on the site.

Negligible- little to no impacts observed.

Minor - Impact limited to compacted and or contaminated soil or minor canopy damage such as exhaust burning from heavy machinery. Trees with *minor* may require corrective maintenance such as trimming, soil treatments, watering, and mulching.

Significant- Root damage suspected to have impacted large structural roots. Decline in health and/or stability likely with in a given amount of time. Trees with *significant* root damage may require extensive corrective measures such as canopy reduction for retention and continued monitoring for signs of decline or structural instability.

Severe- stability of tree jeopardized with extensive roots loss. Damage to **Critical Root Zone (CRZ)**, may result in main stem/trunk decay. Failure and/or tree mortality likely as result of damage. Trees with *severe* root damage may require removal to reduce risk to life and property.

Tree #	Species	DSH	Construction Impact	Impact Concern	Recommendation
1	Coast Live Oak	30" ²	Minor	Health	Monitor
2	Monterey Cypress	35"	Significant	Stability	Remove
3	Coast Live Oak	10"	Minor	Health	Monitor
4	Coast Live Oak	22" ³	Severe	REMOVED	REMOVED
5A	Coast Live Oak	13"	Significant	Stability	Support system
5B	Coast Live Oak	17"	Minor	Stability	Support System
5C	Coast Live Oak	18"	Significant	Stability	Support System
5D	Coast Live Oak	27"	Minor	Stability	Support System

² Estimated by sight due to tree protection boards.

³ Measurement provided by City Forester.

West Coast Arborists, Inc.

390 Martin Avenue Santa Clara, CA 95050 (408) 855-8660

Risk assessment

The International Society of Arboriculture *Tree Risk Assessment* program is a system in which to derive an understanding of the risks associated with a given tree and/or tree stand. Factors including *Likelihood of Failure*, *Likelihood of Impacting Target* and *Consequences of Failure* are determined from information collected during the field assessment. These factors are then run through two matrices to produce a risk rating. (Dunster, 2013)

Limitations of Tree Risk Assessment

According to the *Tree Risk Assessment Manual*, published by the International Society of Arboriculture (ISA), it is impossible to maintain trees free of risk: “There is no way to guarantee that a tree will not fail. Tree benefits increase as the age and size of trees increase; however, some level of risk must be accepted to experience the benefits provided. The goal in assessing and managing trees is to strike a balance between the risk that a tree poses and the benefits that individuals and communities derive from trees.”

“A considerable level of uncertainty is typically associated with tree risk assessment due to our limited ability to predict natural processes (rate of progression of decay, response growth, etc.), weather events, traffic and occupancy rates, and potential consequences of failure.”

“Conditions affecting trees change constantly; none of us will ever be able to predict every tree failure. Conducting a tree risk assessment neither ensures nor requires perfection. Risk assessment should, however, ensure that all reasonable efforts have been made to identify the *likelihood of failure*, the *likelihood of impact*, and the *consequences of failure* present at the time of assessment.”

“Abnormally extreme storms, such as tornadoes, hurricanes, earthquakes and heavy freezing rain, are not predictable and, in most cases, are not considered for categorizing *likelihood of failure*.”

Risk Assessment Table - Time Frame 5-Years

Risk assessments could not account for people in the area as no formal occupancy rate survey could be completed and the property is still under construction. Consequences mostly reflect damage to property, but it is important to understand that any tree part impacting persons in the area would likely result in severe consequences such as permanent injury or death.

Tree	Failure Concern	Target	Likelihood of Failure	Likelihood Impacting Target(s)_	Consequences	Risk Rating
1	Branch/Leader Failure	Street	Improbable	Low	Minor	Low
2	Root Failure	Guadalupe 3NE/4NE of 3 rd property	Possible	High	Severe	Moderate
2	Branch/Leader	Houses/Patio	Probable	Medium	Significant	Moderate
3	Branch	Guadalupe 3NE of 3 rd Back Patio	Improbable	Low	Minor	Low
4	N/A Tree Removed	N/A	N/A	N/A	N/A	N/A
5A	Roots	Neighboring property to east back of house	Probable	High	Minor	Moderate
5B	Roots	Guadalupe 5NE of 3 rd Rear Cottage/Shed	Possible	High	Minor	Low
5C	Roots	Guadalupe 5NE of 3 rd Rear Cottage/Shed	Possible	High	Significant	Moderate
5D	Roots	Guadalupe 5NE of 3 rd Patio/Back yard	Possible	High	Minor	Low



Tree Appraisal

The appraisal was determined using guidelines set forth by the Council of Tree & Landscape Appraisers in the *Guide for Plant Appraisal, 10th Edition*. In addition to the Western Chapter of the International Society of Arboriculture book titled *Species Assignment and Classification and Group Assignment* was used to determine the most commonly available replacement tree size, replacement price and average installation costs. The **Reproduction Method by Trunk Formula Technique**, where the value of the tree is determined by extrapolating the purchase cost of a nursery-grown tree up to the size of the size of the subject tree being valued. Appendix-C of this report provides an example of the process used to produce the estimate of value.

Criteria for Appraisal

The seven trees/stems most impacted by construction were chosen for appraisal. These values may be used by the city for code enforcement purposes. Appraisal of the remaining trees can be provided upon request.

Tree #	Species	DSH	Construction Impact	Appraised Value
1	Coast Live Oak	30"	Minor	\$11,000.00
2	Monterey Cypress	35"	Significant	\$10,300.00
4	Coast Live Oak	22"	Severe	\$6,200.00
5A	Coast Live Oak	13"	Significant	\$2,300.00
5B	Coast Live Oak	17"	Minor	\$2,900.00
5C	Coast Live Oak	18"	Significant	\$3,700.00
5D	Coast Live Oak	27"	Minor	\$8,900.00

Total Appraised Value of Affected trees \$45,300.00

Discussion

Impact to trees on the site could clearly have been avoided through careful hand excavation. However, it appears that the work was completed using an excavator with disregard for root systems. The large 6-inch root that was visibly snapped by the multi-stem Oak #5, not only is a concern for root loss but also damages to the trunk from leverage forces when the root was snapped. Roots pulled from the ground can cause fractures in other **buttress**/support roots and in the main stem of a leader, these cracks can serve as an entry point for pathogens and develop into cavities from decay over time. Unfortunately, damage from construction can take years to be reflected in the canopy and often can result in sudden tree death or catastrophic failure of the tree itself.

Tree #'s 2, 4 and the multi-stem oak #5 sustained the most root damage, and as seen with tree #4 the damage resulted in tree failure. Tree #2 (Monterey Cypress) has sustained a significant amount of root loss from recent construction and may have been impacted in the past from the property to the south, as there is a noticeable grade change. If the grade change was completed recently (inside of 10-20 years) it may have impacted the trees stability. However, with the information we have now, and if no other grade changes have been made in ten or more years, I believe that the tree could be retained. A 30% crown reduction would reduce weight and stress on the root system, thus reducing likelihood of failure. This significant of a crown reduction would have significant impacts to the tree's health, and tree health or stability is never 100% guaranteed, additionally the pruning would likely reduce the esthetics of the tree due to extensive loss of canopy.

Tree #5 is in most respects 4 different trees; however, the leaders have developed in a way where they act as one. Loss of one leader would have immediate impacts to the other leaders. The root systems have undoubtedly become intertwined and may have grafted in some areas. Disturbances to one tree could have health impacts or even structural impacts with the loss of anchoring from another leader's weight, as well as increased wind loading. The location of these leaders raises other concerns as they grow over and even touch the neighboring house to the north (no property boundaries were marked, and the tree stems appear to be on or near the property line). Although this tree has been impacted by construction and has several structural issues and site conflicts, it has an irreplaceable unique character. I believe the tree could be retained if a supplemental support system were installed. The system would require strategically placed support **props** and **cabling**.

Any mitigation efforts to retain trees would have to be completed with all neighboring properties in the **target zone** of any tree understanding the associated risks of retaining the trees as well as committing to ongoing maintenance and monitoring of the trees to reduce likelihood of failure.

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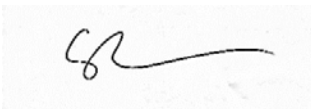
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Recommendation

1. Remove Tree #2
2. Consult with neighboring properties regarding the retention of the multi-stem Oak #5
 - a. Mitigations must be in place before winter winds and rains begin, or within 2 months of this report.
 - b. Establish support system plan in the field with a certified arborist and affected parties, to determine acceptable property line encroachment for support structures.
 - c. Removal of the entire oak is advised if no support system is installed.
3. Any further excavation or construction within the dripline of any retained tree should be supervised or approved by a certified arborist.
4. Post construction inspection of retained trees recommended.
5. Soil injections for retained trees with low nitrogen fertilizer/fungicidal blend to aid reduce stress to trees from construction.
6. Trimming of any tree retained, focusing on end weight reduction of overextended branches or lopsided canopies, removal of dead or broken branches.
 - a. No live branch over 3-inches shall be removed or more than 20% of canopy without approval of a certified arborist and or city forester.

Thank you for the opportunity to assist you in your tree assessment needs. If there are any questions or concerns feel free to contact me directly at (408) 835-0438, greeve@wcainc.com

Respectfully,



Glenn O. Whitlock-Reeve
Board Certified Master Arborist
WE-10177BTM
ISA Qualified Tree Risk Assessor
West Coast Arborists, Inc.

West Coast Arborists, Inc.

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Glossary

Air-spade- specialist excavation tool that uses compressed air to remove and break up soil with minimal damage to roots and underground utilities. It can be used for a variety of reasons including the alleviation of compaction, soil improvement, root inspection and root location.

Buttress Roots- roots at the trunk base that help support the tree and equalize mechanical stress.

Critical Root Zone (CRZ)- An area where roots are present around a tree that are crucial to health and stability of the tree. Tree roots expand far beyond the canopy of the tree; most roots grow within the top 6-8" of the soil. Roots grow where conditions are most favorable, seeking oxygen water and nutrients. There is no industry standard to for measuring the *Critical Root Zone*, but for the purpose of this report it shall be defined as the **DSH** multiplied by 8-inches. All excavation should be completed by hand and with an **Air-spade** in the defined **CRZ**. No root larger than 2-inches in diameter shall be cut without approval from certified arborist within the **CRZ**.

Cabling- installing of a cable within a tree between limbs or leaders to limit movement and provide supplemental support.

Depreciation- a loss in value from any cause; typically caused by either physical, economic, or external factors.

Fibrous roots- small hair like roots that absorb nutrients and water.

Props – ridged structures installed beneath a low branch or trunk to limit movement and provide supplemental support.

Reproduction cost- the cost to replace an improvement with an exact replica. Referred to in previous editions of the *Guide* as *replacement cost*.

Target Zone- the area where a tree or branch is likely to land if it were to fail.

Trunk formula technique (TFT): a technique for developing a cost basis that involves extrapolating the purchase cost of a nursery -grown tree up to the size of the subject tree being valued.

Value: the monetary worth of a property, good or service to buyers and sellers at a given point in time. Expectation or present worth of future benefits. Economic value is created by scarcity restricting supply and utility enhancing demand. Not to be confused with cost or price.

Value estimate: an assignment result in which the plant appraiser estimates the economic value of a plant or landscape item based on its market supply and demand.



Guadalupe 4NE of 3rd – August 13, 2020

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Richard F. Gooding, J. R. (2019). *Guide for Plant Appraisal, 10th Edition*. Atlanta : International Society of Arboriculture .

Tree Care Industry Association, Inc. (2017). *Tree, Shrub, and Other Woody Plant Management- Standard Practices (Pruning)*. New Hapshire : Tree Care Industry Association, Inc.

Western Chapter of International Society of Arboriculture. (2004). *Species Classification And Group Assignment* . Western Chapter of International Society of Arboriculture.

Guadalupe 4NE of 3rd – August 13, 2020

Appendix A- Map (Approximate Tree locations)



Tree locations are approximate, and no property boundaries were provided.

Appendix B- Observation Photos

Tree-1



Figure 1: Tree #1 looking northeast, note piled soils on eastern root zone, indicated by red arrow.



Figure 2: Dead branches noted by red arrow in upper canopy.

Tree-2



Figure 3: Looking south at tree #2 Note excavation with in 6-feet of base of tree to a depth of nearly 3-feet. Also, trunk can be seen growing at an angle to the west and heavy canopy.



Figure 4: Looking east, note how house on right (Guadalupe 3NE of 3rd is built below the grade of base of tree. Southern canopy seen heavily cut back.

Tree-3 and Privets



Figure 5: Tree #3 seen looking south, note limited foliage.



Figure 6: Small Privet trees seen looking east.

Tree-4 (Stump)



Figure 7: Stump of tree #4 seen with measuring tape.



Figure 8: Excavated area shown on west side of stump, cut roots can be seen with evidence of heaving/unearting from reported tree failure circled in red.

Multi-Stem Oak – Stems

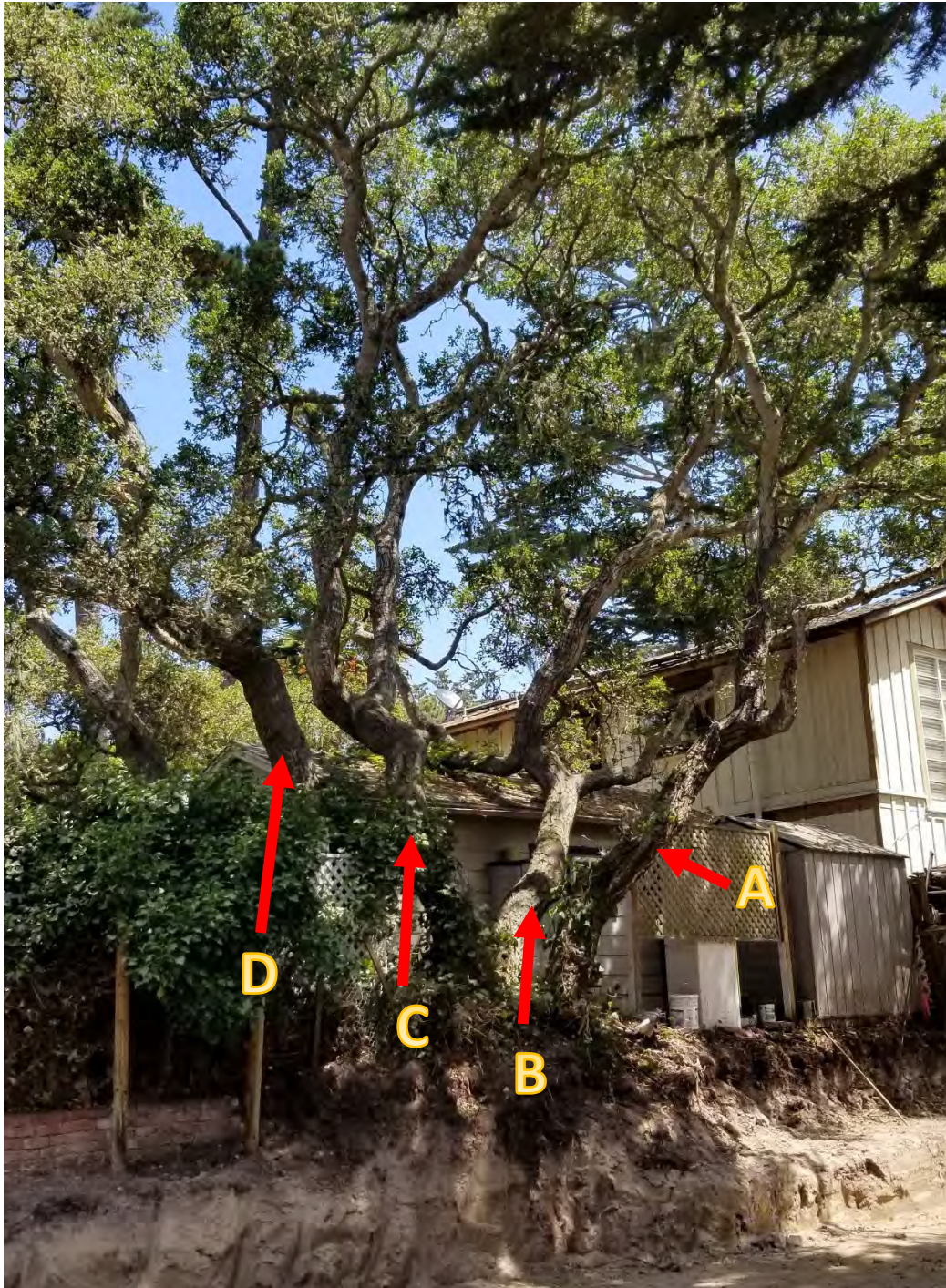


Figure 9: Multi-Stem Oak #5 seen looking northeast. Note Stem “B” Resting on roof and “C” within 2-feet.

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Appendix C- Risk Rating Matrices

In deriving an estimate of risk, you must consider the targets, the likelihood of a tree failure impacting a target, and the consequences of failure. These factors are used in conjunction with the tables below to derive an estimated risk rating.

Likelihood of Failure	Likelihood of Impacting Target			
	Very Low	Low	Medium	High
Imminent	Unlikely	Somewhat Likely	Likely	Very Likely
Probable	Unlikely	Unlikely	Somewhat Likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat Likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Likelihood of Failure and Impact	Consequences			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

Extreme –The tree risk assessor should recommend that mitigation measures be taken as soon as possible. In some cases, this may mean immediate restriction of access to the target zone area to avoid injury to people.

High – The decision for mitigation and timing of treatment depends on the risk tolerance of the tree owner or risk manager. In populations of trees, the priority of high-risk trees is second only to extreme-risk trees.

Moderate- The decision for mitigation and timing of treatment depends on the risk tolerance of the tree owner or risk manager. In populations of trees, moderate-risk trees represent a lower priority than high – or extreme risk trees.

Low- Mitigation treatments may reduce future risk, but the categorized risk rating is already at the lowest level.

Appendix D- Appraisal Calculations (Shown for Tree #2)**Depreciation Factors****Health (*Fair 80% Rating*)⁴**

Vigor is normal for the species. No significant damage due to diseases or pests. Any twig dieback, defoliation or discoloration is minor.

Structure (*Good 65% Rating*)

Well developed structure defects are minor and can be corrected.

Form (*Good 75% Rating*)

Minor asymmetries/deviations from species norm. Mostly consistent with the intended use. Function and aesthetics are not compromised.

Functional Limitations (FL): *60% Rating*

Large maturing tree near property line (Minor Impact).

External Limitations (EL): *75% Rating*

Limited growing space adjacent houses, (Minor Impact)

The bellow table shows factor values applied to all trees appraised in this assessment.

<u>Tree #</u>	<u>Health</u>	<u>Structure</u>	<u>Form</u>	<u>FL</u>	<u>EL</u>	<u>DSH</u>	<u>Replacement</u>	<u>After care</u>
1	80%	80%	80%	70%	75%	30"	\$250	\$600
2	80%	65%	75%	60%	75%	35"	\$250	\$600
4	75%	65%	75%	75%	75%	22"	\$250	\$600
5A	75%	60%	75%	75%	75%	13"	\$250	\$600
5B	75%	60%	75%	60%	75%	17"	\$250	\$600
5C	75%	75%	75%	60%	75%	18"	\$250	\$600
5D	75%	80%	75%	75%	75%	27"	\$250	\$600

⁴ Ratings are used for tree appraisal, and our calculated from table 4.1 on page 44 of the *Guide for Plant Appraisal*, 10th edition.



Guadalupe 4NE of 3rd – August 13, 2020

Appraisal Calculations Tree #2 (continued)

Subject Tree (Tree #2)**Species:** Monterey Cypress

- | | |
|---|---------------------------|
| 1. Trunk Diameter: | 35-in |
| 2. Cross- Sectional Area (line 1) ² x 0.7854: | 962-in² |
| 3. Condition Rating: | 65% |
| (Lowest Individual rating to establish overall condition rating) | |
| a. Health: 80% | |
| b. Structure: 65% | |
| c. Form: 75% | |
| 4. Functional Limitations: near property line | 60% |
| 5. External Limitations: poor soils in area/patterns of decline. | 75% |

Replacement Tree**Species:** Coast Live Oak (*Quercus agrifolia*)

- | | |
|--|----------------------------|
| 6. Trunk Diameter: | 2.46-in |
| 7. Cross-Sectional area (line 6) ² x 0.7854: | 5.16-in² |
| 8. Replacement Tree Cost (24-in Box): | \$172.73 |

*(Lines 6-8 Source: Species Classification and Group Assignment 9th Edition)***Calculations**

- | | |
|---|--------------------|
| 9. Unit tree cost (Line 8 / Line 7): | \$33.47 |
| 10. Basic reproduction cost (line 2 x line 9): | \$32,198.14 |
| 11. Depreciated reproduction cost: | \$9,417.95 |
| (line 10 x line 3 x line 4 x line 5) | |

Additional Costs

- | | |
|---|-----------------|
| Clean up: (Property owner responsibility) | N/A |
| Replacement Tree Installation: (City standard) | \$250.00 |
| Aftercare: (weekly watering for 1 year during summer months) | \$600.00 |

(Additional costs are low estimates sourced from previous experience and similar projects)

- | | |
|---|--------------------|
| 12. Total additional costs: | \$850.00 |
| 13. Total reproduction cost (line 11 + line 12): | \$10,267.95 |
| 14. Rounded: | \$10,300.00 |

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Guadalupe 4NE of 3rd – August 13, 2020

ASSUMPTIONS AND LIMITING CONDITIONS

1. Care has been taken to obtain all information from reliable sources. All data has been verified insofar as possible; however, the Consultant can neither guarantee nor be responsible for the accuracy of information provided by others. Standard of Care has been met with regards to this project within reasonable and normal conditions.
2. The Consultant will not be required to give testimony or to attend court by reason of this report unless subsequent contractual agreements are made, including payment of an additional fee for such services as described in the fee schedule and contract of engagement.
3. Loss or alteration of any part of this report invalidates the entire report.
4. Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than the person to whom it is addressed, without the prior written consent of the Consultant.
5. This report and any values expressed herein represent the opinion of the Consultant, and the Consultant's fee is in no way contingent upon the reporting of a stipulated result, a specified value, the occurrence of a subsequent event, nor upon any finding to be reported.
6. Unless expressed otherwise: 1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; and 2) the inspection is limited to visual examination of accessible items without dissection, excavation, or coring, unless otherwise stated. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the tree(s) or property in question may not arise in the future.
7. Arborists are tree specialists who use their education, knowledge, training, and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living near trees. It is highly recommended that you follow the arborist recommendations; however, you may choose to accept or disregard the recommendations and/or seek additional advice.
8. Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that fail in ways we do not fully understand. Conditions are often hidden within trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, or for a specific period of time.
9. Any recommendation and/or performed treatments (including, but not limited to, pruning or removal) of trees may involve considerations beyond the scope of the arborist's services, such as property boundaries, property ownership, site lines, disputes between neighbors, and any other related issues. Arborists cannot take such considerations into account unless complete and accurate information is disclosed to the arborist. An arborist can then be expected to consider and reasonably rely on the completeness and accuracy of the information provided.
10. The author has no personal interest or bias with respect to the subject matter of this report or the parties involved. He/she has inspected the subject tree(s) and to the best of their knowledge and belief, all statements and information presented in the report are true and correct.
11. Unless otherwise stated, trees were examined using the risk assessment criteria detailed by the International Society of Arboriculture's publications *Best Management Practices – Tree Risk Assessment* and the *Tree Risk Assessment Manual*.

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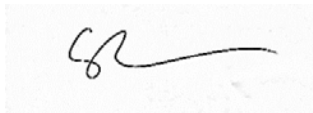
Appendix E - Certification of Performance

I, Glenn O. Whitlock-Reeve, Certify that:

1. I have personally inspected the tree(s) and property referred to in this report and have stated my findings accurately.
2. I have no current or prospective interest in the tree or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved.
3. The analysis, opinions and conclusions stated herein are my own and are based on current scientific procedures and facts.
4. My analysis, opinions and conclusions were developed, and this report has been prepared according to commonly accepted arboricultural practices and standards.
5. No one provided significant professional assistance to me, except as indicated within the report.
6. My compensation is not contingent upon the reporting of predetermined conclusion that favors the cause of the client or any other party nor upon the results of the assessment, the attainment of stipulated results, or the occurrence of any subsequent events.

I further certify that I am a member in good standing of the American Society of Consulting Arborists and a Board-Certified Master Arborist with the International Society of Arboriculture (ISA). I have been a Certified Arborist since 2013 and in the practice of arboriculture for over 10 years.

Signed:



Glenn O. Whitlock-Reeve
Board Certified Master Arborist
WE-10177BTM
ISA Qualified Tree Risk Assessor
West Coast Arborists, Inc.

Date: 08/13/20

West Coast Arborists, Inc.

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Guadalupe Street Four Northeast of Third Avenue
Stop Work Order

Damage can be seen from the street. There was a tree on the far eastside of the lot. It was removed as it was failing onto the neighbor's house.

















CITY OF CARMEL-BY-THE-SEA FOREST AND BEACH COMMISSION Staff Report

August 20, 2020
PUBLIC HEARINGS

TO:	Forest and Beach Commissioners
SUBMITTED BY:	Sara Davis, City Forester
SUBJECT:	Approval or denial, with or without, conditions for lifting the Stop Work Order at Guadalupe 4 Northeast of Third Avenue.

RECOMMENDATION:

Require reimbursement to the City the cost of the Arborist Report. Consider requiring payment of the appraised value of tree 4 of \$6,200 at a treble rate of \$18,600 to be deposited in the Reforestation Fund. Consider requiring a bond of \$45,300 for the remaining damaged trees to be held by the City for 5 years. Require resubmission of a landscape plan with 75% native plant material, including trees, and vegetation enhancements to the public right of way.

BACKGROUND/SUMMARY:

A Stop Work Order was issued at Guadalupe 4 Northeast of Third Avenue on August 6, 2020 for violation of Municipal Code 17.48.110. Extensive root damage was observed. An oak on the west side of the parcel was in active failure toward the neighboring property and was ordered to be removed immediately. Consulting Arborist, Glenn Whitlock-Reeve was contacted to draft an Arborist Report.

Mr. Witlock-Reeve observed:

“A total of 8 trees and 1 stump were present on the property, including 1-Monterey Cypress (*Hesperocyparis macrocarpa*), 3 Privet Trees (*Ligustrum confusum*) and 3-Coast Live Oaks (*Quercus agrifolia*). Tree #5 is a multi-stem Coast Live Oak that was considered 1-tree for purposes explained later in this report. Excavation on site appears to have consisted of a complete tear down of a house for a complete house rebuild. Excavation was as deep as 3-feet within 2-feet of established trees on site. Large roots up to 6-inches could be seen broken in the excavated walls. Root zone disturbances accounted for as much as 50% of 3-trees on site and resulted in an emergency removal of a tree uprooting from root loss (Tree #4).

Tree #1 a large and healthy Coast Live oak did not have any visible evidence of excavation within the immediate root zone. A large pile 6-foot tall pile of soil is present east of the tree within the dripline. Dead branches up to 2-inches were noted within the canopy and power lines are present above the tree.

Tree #2 a large Monterey Cypress near 100-feet tall sustained substantial root zone damage on the northern side of the tree. The trunk has a lean and the canopy is heavy to the west. The south side of the tree appears to have had grade changes that may have resulted in root loss in the past depending on when

the house at Guadalupe 3NE of 3rd was built. The foliage had minimal dead tissue and no pests or disease were visible.

Tree #3 a relatively small Coast Live Oak is present with the eastern dripline of Tree #4. Excavation was present 6-feet to the north of the trunk, but minimal impact from construction is suspected. The tree was noted for having a sparse canopy.

Tree #4 was reported to have been cut down because cut roots caused the tree to begin to fail to the east on an adjacent house. As much as 50% of the trees root zone had been removed during excavation and roots up to 4-inches could be seen severed in the bank wall.

Tree #5 is a multi-stem oak consisting of 4-large leaders. Any roots that may have been present on the southern side of the tree have been removed. A large broken root that had been broken by force was visible on below Leader "C". Leader "B" Could be seen resting on the roof of the cottage/shed in the back yard of Guadalupe 5NE of 3rd. Leader C was within 2-feet of the roof as well. The grouping of trees displayed health canopies with minimal signs of pests or diseases."

Excavation within 15 feet of the trunks of trees 1, 2, 3, 4, and 5 were not performed by hand as required by the conditions of the building permit. The required mulch was not installed prior to the beginning of the project. The City Forester was not contacted for the inspection of required tree protection prior to construction.

FISCAL IMPACT:

ATTACHMENTS:

Arborist Report

Letter from Mo and Fay Massoudi

Justin Ono
International Society of Arboriculture
Board Certified Master Arborist WE-9388B
1213 Miles Avenue
Pacific Grove CA, 93950
Telephone (831) 373-7086

August 10, 2020

Mr. Jerry Stepanek
3063 Larkin Road
Pebble Beach, CA 93953

RE: Construction Impact Assessment – Guadalupe 4 NE of 3rd
APN#: 010-022-013-000

Mr. Stepanek;

On August 6, 2020 contacted us to assess trees on a property you own located at Guadalupe Street, 4 Northeast of 3rd Ave, Carmel, CA 93923. During construction, the City Forester who was on site, noticed roots were cut on an oak tree leaning towards the property to the east. The tree was the declared to be at imminent risk of failure by the forester and the tree ordered removed. A visual tree assessment was conducted for the tree prior to its removal as well as several other trees adjacent to the construction area. The following report discusses our findings.

Sincerely,



Justin Ono
Board Certified Master Arborist WE-9388B

The following report is based on a visual inspection of tree condition and for obvious defects. It is not intended to constitute a complete health and hazard evaluation. Further investigation would be required to more definitively evaluate the health and hazards posed by the subject trees, some of which may not be disclosed by visual inspections. Investigations include but are not limited to core samples, root crown excavation, and visual inspection of the entire trees by climbing. Please be advised that healthy trees and/or limbs may fail under certain conditions, and that the above recommendations are based on industry standards of tree care. This report is made with the understanding that no representations or warranties, either expressed or implied are made that any trees referred to in the report or located on or adjacent to the subject property are sound or safe. Acceptance and use of this report constitutes the acknowledgement of the following stated facts and that the Client shall pay to Consultant consulting fees in accordance with the Fee Schedule attached hereto and made a part hereof as Exhibit A for the services actually performed and shown on such statement within thirty (30) days after receipt thereof.

Construction Impact Assessment Guadalupe 4 NE of 3rd

Prepared by Justin Ono
1213 Miles Avenue
Pacific Grove CA, 93950
Telephone (831) 373-7086

ASSIGNMENT/SCOPE OF WORK

I was asked to assess several trees located at Guadalupe Street 4 SE of 3rd Ave that were observed damaged during construction, leading to a stop work order being issued to the project. The assignment is to determine the health and condition of trees that are located adjacent to the construction area and to determine disturbance done to the trees by the construction. At the request of Mr. Stepanek, I am to document my findings in the form of a report to be submitted to the City of Carmel for review and to provide an estimate of the monetary value of the trees on site.

LIMITATIONS OF THE ASSIGNMENT

We (FO Consulting) have no prior knowledge of this project, its trees, or the circumstances leading to the actions on this property. The findings of this report are limited to a visual assessment of the trees on August 6th and 7th, 2020. The 21-inch diameter Coast live oak that was leaning towards the property to the east was removed and was evaluated before its removal. No further tests such as a complete root collar examination or climbing of the tree were made as part of the assessment diagnosis as these were neither requested nor considered necessary.

Disclosure Statement

It is important to note that Urban Foresters/Arborists are tree specialists who use their education, knowledge training and experience to examine trees, recommend measures to enhance their health and beauty and to attempt to reduce the risk of living near trees. Clients may choose to accept or disregard the recommendations of the arborist or to seek additional advice. Trees and other plant life are living, changing organisms affected by innumerable factors beyond our control. Trees fail in ways and because of conditions we do not fully understand. Urban Foresters/Arborists cannot detect or anticipate every condition or event that could possibly lead to the structural failure of a tree. Conditions are often hidden within the trees and below ground. Urban Foresters/Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, for any specific period or when a tree or its parts may fail. Further, remedial treatments, as with any treatment or therapy, cannot be guaranteed. Treatment, pruning, bracing and removal of trees may involve considerations beyond the scope of the arborists skills and usual services such as the boundaries of properties, property ownership, site lines, neighbor disputes and agreements and other issues. Therefore, urban forester/arborists cannot consider such issues unless complete and accurate information is disclosed in a timely fashion. Then, the urban forester/arborist can be expected, reasonably, to rely upon the completeness and accuracy of the information provided. Trees can be managed but not controlled. To live near trees, regardless of their condition, is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.

Hazard/hazard potential: For the purposes of this evaluation and/report, a tree or tree part that presents a threat to humans, livestock, vehicles, structures, landscape features or other entity of civilization from uprooting, falling, breaking or growth development (e.g., roots). While all large landscape trees in proximity to such targets present some degree of hazard regardless of their condition, such inherent hazard is not intended as within this definition and its usage in this evaluation and report.

Inspection limitations: The inspection of these trees consisted solely of a visual inspection from the ground. While more thorough techniques are available for inspection and evaluation, they were neither requested nor considered necessary.

As trees and other plant life are living, changing organisms affected by innumerable factors beyond our control, F. O. Consulting and its personnel offer no guarantees, stated or implied, as to tree, plant or general landscape safety, health, condition or improvement, beyond that specifically stated in writing in accepted contracts. This report is based on a visual inspection of tree condition and for obvious defects. It is not intended to constitute a complete health and hazard evaluation. Further investigation would be required to more definitively evaluate the health and hazards posed by the subject trees, some of which may not be disclosed by visual inspections. Investigations include but are not limited to core samples, root crown excavation, and visual inspection of the entire trees by climbing. Please be advised that healthy trees and/or limbs may fail under certain conditions, and that any recommendations given are based on industry standards of tree care.

BACKGROUND

On August 6, 2020, F.O. Consulting was contacted by Mr. Jerry Stepanek who requested a review of a tree that had been observed by the city forester Ms. Sara Davis appearing to be unstable. Mr. Stepanek was in the process of excavation for his new construction when the city forester was called out on site to evaluate the trees. A 21-inch diameter Coast live oak at the east property boundary was observed to have roots severed and consequently deemed imminently hazardous by Ms. Davis. A stop work order for the project was issued by the forester who ordered the Oak tree to be immediately removed to mitigate the hazard. While on site the forester examined two other trees but after inspection was not concerned with their health and stability. According to Mr. Stepanek a 3-4-inch root was cut on the Monterey cypress tree on the south property border by the city forester.

OBSERVATIONS

The following are observations taken on site:

- The site is in the process of construction of a new single-family home. Excavation was underway with for the building foundation when the city forester stopped the project.
- The site has a naturally occurring spring underneath it. Water was observed coming out from under “Oak tree #1” and the ground inside the excavation was muddy and wet.
- Three trees were adjacent to the grading on the site.
 - “Oak tree #1” is a 21-inch Coast live oak tree that is on the east property boundary with a lean towards the east. The tree was observed with roots cut opposite of the lean. Two roots (approximately 2 and 3 inches) were observed cut 36 inches from the base of the tree. The roots were cut cleanly but appear to have been ripped prior to cutting to establish a clean edge. The cut roots account for approximately 40% or greater of the tree’s root system. The wood from the removed tree shows signs of internal decay.
 - “Oak tree #2” is a multi-stemmed 15, 16, 16, 17, and 19-inch diameter Coast live oak on the north property line. The tree had excavation around it but only several small roots were observed (between 2 and 3 inches). The tree’s placement above the grading and offsetting leans do not appear to put the tree in an elevated risk for failure or to affect the tree’s long-term health and viability. The cut roots account for approximately 30-40% of the tree’s root system.
 - “Cypress tree #1” is a 35-inch diameter Monterey cypress tree on the south property border. The tree stands approximately 60-feet tall with a crown spread of 40-feet. The tree is in fair condition with a thick crown and large amounts of dead branches in the crown. According to the Mr. Stepanek, an approximately 4-inch root was cut on the excavation side of the tree by the city forester. The root extended a foot beyond the cut and likely was severed for construction of the previous structure on site.
- “Oak tree #1” appeared to have been leaning for a long time and was slowly increasing. The tree was leaning on the fence and buckling a fence post that appears weathered. A large branch (~6-8-inches) was cut on the other side of the fence for the house to the east.
- The construction is taking place mostly in the footprint of a prior pre-existing structure. The building is no longer there and has only been observed through historical aerial and drive by photographs.

Construction has had varying impacts on the trees on site. “Oak tree 1” appeared to have been unstable and encroaching on the neighboring property for some time and we agree with the forester’s decision to have the tree removed. The tree was in fair to poor condition and constituted a hazard before the construction took place. Removal and replacement of the tree is beneficial for the site as the tree was a liability that would ultimately need to be removed anyways. The two other surrounding trees were minimally impacted but need to be pruned for dead wood removal and lightened for wind to pass through. The Monterey cypress tree on the south property boundary especially has a full crown with a large amount of deadwood and needs to be cleaned and thinned to reduce the wind pressure on the tree. “Oak tree #2” is shorter and generally below the surrounding tree canopy and limited roots were observed after excavation.

Background and Assessment Technique Used

Tree value for the oak was calculated using guidelines set forth by the Council of Tree & Landscape Appraisers in the Guide for Plant Appraisal, 10th Edition. This method is used in conjunction with the Western Chapter of the International Society of Arboriculture book titled Species Assignment and Classification and Group Assignment to determine the most commonly available replacement tree size, replacement price, and average installation costs. The methodology used was the Reproduction Method by Trunk Formula Technique, where the value of the tree is determined by extrapolating the purchase cost of a nursery-grown tree up to the size of the subject tree being valued.

Ratings Chart -The trees were rated for condition (health, structure, and form) Table 1.A. Functional and external limitations were then deducted to achieve the extrapolated value expressed in the second table.

Tree	Species	DBH	Condition	Functional Limitations	External Limitations	Replacement tree
Oak 1	C. L. oak	21	Fair	Poor	fair	C. L. oak

(Table 1)

Valuation Chart - The following chart states the appraised value of existing tree on both

Tree #	Species	DBH	Construction Impact	Past Treatment	Appraised Value
Oak 1	C. L. oak	41"	Significant	Crown raise, Thin	\$6200

(Table 2)

Appraisal Total
\$6200.00

Functional limitations are an assessment of species – site interactions. They are factors associated with the interactions of a tree and its planting site. The higher the percentage the less impact on plant success. These factors affect plant conditions, limit development, or reduce the utility of the plant in the foreseeable future.

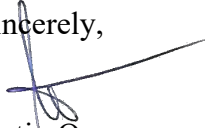
External limitations are an assessment of factors that are outside the property, out of control of the property owner that affect plant condition, limit development, or reduce the utility of the plant in the foreseeable future. The higher the percentage the less impact to plant success. Examples are municipal water use limitations, competing infrastructure, or serious pests in the area (i.e. Sudden oak death, Western oak bark beetle, California oak moth caterpillar, or Oak root fungus).

Assessment Limitation Methodology

“Oak tree #1” is a 21” diameter Coast live oak on the east property boundary.

- It is in fair health being in a codominant/intermediate crown position. The tree has a significant lean and is putting pressure on the fence.
- Construction impacts on roots were significant. Its functional limitations are poor due to these impacts. It is susceptible to Sudden oak death, Western oak bark beetle, California oak moth caterpillar, and Oak root fungus. California oak moth is very prevalent and inhibit growth but are not as deadly as other pests, so its external limitations are fair.

Sincerely,



Justin Ono

Board Certified Master Arborist WE-9388B

This report is based on a visual inspection of tree condition and for obvious defects. It is not intended to constitute a complete health and hazard evaluation. Further investigation would be required to more definitively evaluate the health and hazards posed by the subject trees, some of which may not be disclosed by visual inspections. Investigations include but are not limited to core samples, root crown excavation, and visual inspection of the entire trees by climbing. Please be advised that healthy trees and/or limbs may fail under certain conditions, and that the above recommendations are based on industry standards of tree care. This report is made with the understanding that no representations or warranties, either expressed or implied are made that any trees referred to in the report or located on or adjacent to the subject property are sound or safe.



“Oak tree 1”



Roots cut on "Oak tree #1"



“Oak tree #1” leaning over property to east



“Oak tree #1” putting pressure on fence



“Cypress tree #1”



Grading around “Cypress tree #1”



Root cut by city forester on "Cypress tree #1"



Roots cut on "Oak tree #2"



“Oak tree #2”

Location: Guadalupe 4 NE of 3rd

Subject Tree: Tree 1 Coast Live Oak on E property line

Species: Coast Live Oak

1	Trunk Diameter	21
2	Cross Sectional Area (in^2)	346.36
3	Condition (Lowest individual rating)	50%
	Health	60%
	Structure	50%
	Form	80%
4	Functional Limitation	50%
5	External Limitation	75%

Replacement Tree

Species: Oak

6	Trunk Diameter	1.63
7	Cross Sectional Area (in^2)	2.09
8	Replacement tree cost (24-in box)	\$ 172.73

Calculations

9	Unit Tree Cost	\$ 82.65
10	Basic Reproduction Cost	\$ 28,625.36
11	Depreciated Reproduction Cost	\$ 5,367.26

Additional Costs

	Clean up (Owner Responsibility)	N/A
	Replacement Tree Installation (City Standard)	\$ 250.00
	Aftercare (weekly watering for 1 year)	\$ 600.00
12	Total Additional Cost	\$ 850.00
13	Total Reproduction Case	\$ 6,217.26
14	Rounded	\$ 6,200.00

August 12, 2020

To whom it may concern:

This letter is to document my support for the removal of the tree recently completed by Stepanek Construction on the property located on Guadalupe between Second and Third Streets.

It has been a concern to me for several years now as the tree was leaning further and further each year, representing a danger to both life and property. Removal of this tree was long overdue and it is now safer for the several properties located within the area of the tree.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Sonia Lessard". The signature is written in dark ink and is positioned above the printed name and address.

Sonia Lessard
Carpenter Street, West Side - 5th house South of Second Street
Carmel by the Sea, California 93921

August 14, 2020

Re: Damage to mature trees and surrounding environment at Guadalupe St. 4 NE of 3rd St. Carmel-By-The-Sea 93921

Dear Forest and Beach Commissioners and the Staff:

We write in regards to the house demolition and subsequent damage to mature trees – and at least one protected trees – at Guadalupe St. 4 NE of 3rd St. Carmel-By-The-Sea (the “**Damaged Property**”), as well as negative impact to the surrounding environment caused by:

J. Stepanek Construction Company (the “Contractor”)
3063 Larkin Road
Pebble Beach, CA 93953
Phone Number (831) 649-4633

We are the home owners and full-time residents since 2002 adjacent to and immediately south of the demolition project at the above-referenced Damaged Property. After living in Carmel for more than two decades, we are very well aware of our surroundings and stewardship responsibilities in this community. In fact, we were attracted to our current home, in significant part, by the different type of mature trees surrounding our lot, which have provided us with shade, tranquility, and the lifestyle we have come to associate with Carmel-By-The-Sea.

As you know, maintaining the integrity of mature – and especially protected – trees is one of Carmel's fundamental rules that any Carmel licensed contractor out to know and follow. Further, as you know, the City of Carmel regulates the trimming and removal of trees, and even requires a permit to remove trees larger than 6 inches in stem and trunk diameter. Accordingly, as part of any approval process, a contractor doing work in the City of Carmel is given actual notice of such rules by virtue of signing documents affirming the contractor's understanding of such rules, and securing the contractor's commitment to abide by the same.

Nevertheless, despite our City rules and community standards, several trees with trunk sizes significantly larger than the threshold requiring approval from the City to modify have been uprooted or damaged at the Damaged Property without City approval. Moreover, one protected tree has already been irreparably harmed and removed from the Damaged Property. As full-time neighbors and concerned citizens, we believe this not only evidences carelessness and possible negligence on the Contractor's part, but also the Contractor's blatant disregard of City rules that cannot be tolerated or sanctioned as a “one-off” occurrence.

During the Contractor's demolition of the old structure on the Damaged Property, mindful of City rules regarding the protection of mature trees, we witnessed and were alarmed by the Contractor's use of certain heavy machinery near mature trees and the one protected tree that was eventually destroyed. Consequently, we provided photos of certain unprotected trees on the Damaged Property to

the City via the Friends of Carmel Forest (FOCF), including as we repeatedly stressed, the mature cypress tree that we share with the Damaged Property, which deserves protection and more care.

Unfortunately, however, as far as we know, the Forester neither responded to communications from the FOCF regarding our concerns, nor conducted a site visit during the remainder of the demolition and soil excavation process by heavy machinery on the Damaged Property. The apparent lack of attention to our concerns by the City officials, in our estimation, resulted in the loss so far of at least one protected tree on the Damaged Property (i.e., a mature oak tree) and potential damage to other mature trees.

In our further estimation, the constant presence of large, heavy equipment and large semi-trucks on the Damaged Property to excavate and haul soil was too aggressive for the mature trees on the Damaged Property as well as the root systems and integrity of trees on our property. Therefore, on August 4, 2020, having received no response from the Forester, we sent an email to the Public Works Department requesting immediate attention to this matter. Unfortunately, by August 6, 2020, as we waited for a material response to our concerns, the Contractor had already committed irreparable harm to the Damaged Property and our property, as evidenced by the photos enclosed below.

The photo immediately below ("**Photo 1**") evidences a lack of tree protection during demolition, but before the soil excavation. In particular, note the absence of any protection for the Cypress tree that straddles the Damaged Property and our property (in the back right side of the photo).



The next photo, immediately below ("**Photo 2**"), provides a closer view of the unprotected cypress tree that straddles the Damaged Property (pictured in Photo 2 below) and our property on the other side of the fence pictured. We are astounded, shocked and dismayed that the Contractor would blatantly jeopardize the integrity of this cypress tree, and consequently our well-being. Not only does this tall cypress tree afford the Damaged Property and our property magnanimity and habitat for raccoons and owls, but it also towers over our backyard setting and our dwelling.



We are now gravely concerned about the unjustified removal of soil around the mature cypress tree pictured above and an adjacent mature oak tree. As evidenced by the next photo immediately below ("**Photo 3**"), the Contractor's reckless excavation has unearthed about 14" away from the root systems of these mature trees, thereby jeopardizing the stability of the same trees and placing us in apprehension. We do not know if or when or where these trees may topple over, especially during significant storms and periods of increased soil saturation.



As we recall, a City ordinance requires that any tree larger than a certain size (almost certainly including the size of the cypress tree picture above in Photos 1, 2 and 3, as well as **“Photo 4”** immediately below) must be protected before any demolition, soil removal, and/or construction is approved. For reasons that we do not quite understand, neither the cypress tree of concern, nor the adjacent mature oak tree, were protected. Was the Contractor, who we understand is experienced and has completed many projects in Carmel, granted a special dispensation by the City from protecting the cypress tree and the neighboring oak tree? Was the Contractor permitted to erode the base of the cypress tree and the adjacent oak tree, which already lean between our property, as pictured below in Photo 4?



The next photo, immediately below ("**Photo 5**"), provides a closer view of the excessive soil excavation at the roots of the so-far unprotected cypress and the oak trees on our property border. A reflected in Photo 5, the amount of soil excavated is approximately 4.5 to 5.0 feet deep from the base of these two trees jeopardizing their long term stability.



Moreover, while our immediate concern is the stability of the mature cypress and oak trees on the border of our property, as discussed above, the Contractor has already destroyed at least one protected tree on the Damaged Property as result of his aggressive excavation, and has also placed multiple (unprotected) mature oak trees at risk on the north side of the Damaged Property, as reflected in the photo immediately below ("**Photo 6**"). We believe this pattern of recklessness and disregard for City ordinances creates a potentially unsafe environment for our other neighbors.



Additional Photos





Conclusion:

We believe the Contractor has neither adhered to City ordinances and procedures, nor provided adequate supervision to ensure adherence to the same. As a result, we are concerned about actual and foreseeable damages to mature trees and potentially injurious effects on the Damaged Property, our property, and neighboring lots.

We specifically request that the Forest and Beach Commission place hold on the Contractor's work on the Damaged Property until the Contractor has adequately remediated the damage to date to all protected and unprotected trees that deserve more care and concern, including the mature cypress and oak trees on the border of the Damaged Property and our property.

We also request that the Forest and Beach Commission address the following concerns when deliberating on this issue:

1. Why was the Contractor allowed to excavate so close to and around at least one protected tree on the east side of the Damaged Property, such that the protected tree eventually collapsed and was ultimately removed?
2. Because an excessive amount of base soil around the above-pictured cypress and oak trees on the south side of the Damaged Property (i.e., on our property border) has already been disturbed and hauled away, what happens – and ultimately who bears the responsibility – if either tree soon fall on our house and someone is hurt, or lives are lost?
3. How has the licensed Contractor's demolition and excavation on the Damaged Property avoided the scrutiny of or inspection by City officials charged with enforcing the City ordinances and rules that protect our mature trees and properties?
4. How do we improve the communication between the Planning, Public Works, and Forestry departments so that mature trees within construction zones receive protection?

We hope that the Commissioners and the staff find the Contractor, J. Stepanek Construction Company, responsible for remediating the harm outlined above, including the reduced integrity of the cypress and the oak trees that are now at increased risk of falling on our property and causing potential injury.

Thank your attention to this important matter and your service to our community.

Sincerely,

Mo and Fay Massoudi
PO Box 325
Guadalupe St. 3 NE of 3rd St.
Carmel-By-The-Sea 93921

**Carmel-
by-the-Sea****Sara Davis** <sdavis@ci.carmel.ca.us>

Fwd: Guadalupe 4 NE Third Ave

1 message

Sara Davis <sdavis@ci.carmel.ca.us>
To: Sara Davis <sdavis@ci.carmel.ca.us>

Mon, Sep 21, 2020 at 11:14 AM

----- Forwarded message -----

From: **David Refuerzo** <drefuerzo@sbcglobal.net>

Date: Wed, Aug 19, 2020 at 8:39 AM

Subject: Guadalupe 4 NE Third Ave

To: robert Harary <rharary@ci.carmel.ca.us>

Cc: David Refuerzo <drefuerzo@sbcglobal.net>, Chip Rerig <crerig@ci.carmel.ca.us>, Jeff Baron <jbaron@ci.carmel.ca.us>, Carrie Theis <carrie@hofsashouse.com>, Jan Reimers <jreimers@ci.carmel.ca.us>, Bobby Richards <bobbyrichards6@gmail.com>, Dave Potter <dpotter@ci.carmel.ca.us>

Bob- Please forward my letter to the F & B Commission for their consideration.

!!
!!

As the former Chair and 8 year Forest and Beach Commissioner, I am appalled at what occurred ~2 weeks ago during a home construction project on Guadalupe between 2nd and 3rd Ave. Because the contractor was negligent during the excavation portion of the project, a healthy and significant oak tree at the east end of the property line had to be removed on an emergency basis because it's root ball had been severely compromised. In addition, another significant oak tree at the north end of the property and a majestic/iconic cypress tree on the south side of the property line also had their root systems compromised. The jury is out on whether those two trees will have to be removed in the near term or somewhere down the road.

It would be easy to say that this is just another example of a contractor not following the proper protocols with regard to tree protection and hand excavating around roots, but in this case the city bears some responsibility. The home owner to the south sent several pictures and emails either directly or indirectly to the forestry department about the lack of tree protection and at the start of the excavation expressing his concerns. They never responded until the oak tree that was removed started leaning and someone finally felt compelled to come out and inspect the damage. Unfortunately, the city can't fine itself for what happened during this project, but they can hopefully learn from this experience by re-evaluating the systems that are in place with regard to tree protections and approvals by the Planning Department where major excavations like this project are planned. Perhaps, every existing significant home remodel needs to have its site plan re-approved by the forestry department so that projects that were approved months ago can be evaluated for ensuring proper tree protections.

I strongly recommend that the F & B Commission fine the contractor the maximum amount that they can given the tree value guidelines and that the city consider pulling the license for general contractor for a period of time. Projects where trees are compromised and removed seem to be way to common place and contractors and property owners seem to be willing to pay the cost of the fine because it is inconsequential in comparison to the overall project cost. Perhaps, pulling a contractors license for 6-12 months may be the only way to get their attention and some compliance.

Best Regards,

David Refuerzo



Po Box CC Carmel-by-the-Sea, CA 93921
(831) 620-2000 Fax (831) 620-2004

August 25, 2020

Jaroslav Stepanek
3063 Larkin Road
Pebble Beach CA, 93953

At the August 20, 2020 meeting of the Forest and Beach Commission, the Commission set the following requirements for the Stop Work Order at Guadalupe Street 4 Northeast of Third Avenue:



- Pay a fine of \$50,000 for damage caused to the urban forest to the City's Reforestation Fund
- Pay the appraised value of tree 4 of \$6,200 to the Reforestation Fund
- Deposit with the City a \$17,800 bond to ensure the survival on trees 5A, 5B, 5C, and 5D
- Pay for removal and stump grinding of tree 2 if removal is desired by the Massoudi family
- Reimburse the City for the actual cost of the Arborist Report (invoice has yet to be received)
- Submit a landscape plan with 75% native plant material, including trees and vegetation enhancements to the public right of way, for the City Forester's approval

Upon the completion of these tasks, the Stop Work Order will be lifted.

Please reach out to me if you have any questions.

Sincerely,

Sara Davis
City Forester

CC: Jermel Laurie; Acting Building Official
Robin Scattini; Finance Manager

**FOREST AND BEACH COMMISSION
SPECIAL MEETING
Thursday, August 20, 2020**

MEETING 2:30 PM

CALL TO ORDER AND ROLL CALL

Chair Caddell called the meeting to order at 2:30

Present: Commissioners Berling, Mosley, Myers, Vice Chair Saroyan, Chair Caddell

PUBLIC APPEARANCES

The following members of the public spoke:

Ramie Allard

ANNOUNCEMENTS

The Public Works Director stated the City Clerk is sitting in for Leslie Fenton for the meeting; Leslie will be the Records Secretary for the Commission going forward.

CONSENT AGENDA

Item 1: Approval of Minutes of the July 9, 2020 meeting

The Public Works Director stated the first sentence on page 1 for Item 1 should be removed from the Minutes.

On a motion by Vice Chair Saroyan and seconded by Commissioner Myers, the Forest & Beach Commission approved the Consent Calendar as amended by the following roll call vote:

AYES:	BERLING, MOSLEY, MYERS, SAROYAN, CADDELL
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

PUBLIC HEARINGS

Item 2: Approval or denial of Tree Removal Permit 20-046 for 17 Eucalyptus trees located at San Antonio Avenue and Fourth Avenue.

The City Forester provided the Staff Report for this item; Joey Canepa provided an overview of the planting plan for the project; and the property owner, Laura Overett, spoke to her request.

Clarification between the Commission and staff included clarification of the types of trees and the locations of the trees being planted and clarification regarding the difference in the number of trees being removed and the number of trees being planted.

Item 2 continued...

The following members of the public spoke:

Ramie Allard
Karen Ferlito
Mo Massoudi

Discussion among the Commissioners and staff included discussion of the impact to the various animal habitats, removing the trees due to fire danger, listening to the experts regarding what should and should not be planted in this location and the transition in the landscape plan of upper to lower canopy trees. Additionally, the Commission and staff discussed the Commission's responsibility as it is stated in the General Plan, the need to move on with this project, and the options available with regard to the Commission's decision.

On a motion by Chair Caddell and seconded by Commissioner Berling, the Forest & Beach Commission approved the permit request for the removal of 17 eucalyptus trees with the stumps being removed within the next year (consistent with safety and feasibility), increased the number of replacement upper canopy trees provided in the landscape plan by two, required a 10-year monitoring obligation for a report to be provided to the City Forester of a comparison between the approved plan and what is being planted and the condition of the plantings to be provided each year and that report will be provided to the Commission, required a report to confirm no significant adverse impact to the bird habitat by removing the 17 eucalyptus trees, and accepted the offer of approximately \$21,000 mitigation for the North Dune Restoration project, by the following roll call vote:

AYES:	BERLING, MOSLEY, MYERS, SAROYAN, CADDELL
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

Item 3: Approval or denial of Tree Removal Permit 20-087 for a coast live oak tree located at Carmelo Street 4 Southwest of Second Avenue.

The City Forester provided the Staff Report for this item; the property owner, Ms. Melani, spoke to her request

Clarification between the Commission and staff included clarification if there is an option to notch the tree without killing it as opposed to removing it.

The following members of the public spoke:

Mo Massoudi
Karen Ferlito

Discussion among the Commissioners and staff included discussion of the need for additional options as opposed to removing the tree.

Item 3 continued...

On a motion by Commissioner Mosley and seconded by Vice Chair Saroyan, the Forest & Beach Commission deferred taking action on this matter until additional information is provided, by the following roll call vote:

AYES: BERLING, MOSLEY, MYERS, SAROYAN, CADDELL
 NOES: NONE
 ABSENT: NONE
 ABSTAIN: NONE

Item 4: Approval or denial, with or without, conditions for lifting the Stop Work Order at Dolores Street 7 Southwest of Thirteenth Avenue.

The City Forester provided the Staff Report for this item; the property owner, Ms. Micovic, spoke to the issue; the previous contractor provided information on the incidents leading up to this issue.

Clarification between the Commission and staff included clarification of the option for rapid root regrowth.

The following members of the public spoke:

Ramie Allard
 Karen Ferlito
 Mo Massoudi

Discussion among the Commissioners and staff included discussion of the contractor's history, possibly saving trees one and two and discussion of the options available with regard to the Commission's decision.

On a motion by Commissioner Myers and seconded by Commissioner Mosley, the Forest & Beach Commission approved the removal of trees 11 and 12 immediately, requested the City's Arborist provide direction for the best way to save trees one and two and the associated costs of that and the original report from the Arborist to be paid by the homeowner, required \$10,000 bond, per tree, for trees one, two, three and four for 10 years, required the homeowner to pay the assessed value of the two trees being removed, required the homeowner to resubmit a landscape plan with 75% native planting and also provide an annual report to the City Forester related to the trees on the property, and required permeable materials be used for the driveway between trees three and four, by the following roll call vote:

AYES: BERLING, MOSLEY, MYERS, SAROYAN, CADDELL
 NOES: NONE
 ABSENT: NONE
 ABSTAIN: NONE

Item 5: Approval or denial, with or without, conditions for lifting the Stop Work Order at Guadalupe 4 Northeast of Third Avenue.

Vice Chair Saroyan recused himself due to his relationship with a neighbor of the property involved and left the meeting at this time.

Item 5 continued...

The City Forester provided the Staff Report for this item, the homeowner, the contractor, and the arborist hired by the homeowner discussed their observation of the state of the trees involved.

Clarification between the Commission and staff included clarification of the location for the trees involved with regard to property lines.

Commissioner Mosley left the meeting at this time.

The following members of the public spoke:

Mo Massoudi
Fay Massoudi
Karen Ferlito
Jason Clayton

Discussion among the Commissioners and staff included discussion of the concerns with the actions taken after the City Forester first visited the site, preserving the remaining trees that were damaged, and discussion of the options available with regard to the Commission's decision.

On a motion by Commissioner Myers and seconded by Commissioner Berling, the Forest & Beach Commission approved levying a fine of \$50,000 for damage caused to the urban forest, approved levying a fine of \$6,200 for tree number four that will be removed, required a bond for the appraised value of the oak trees for five years, approved the removal of the cypress tree and grinding of the stump if desired by Massoudi by a company chosen by the neighbor (Massoudi) and the associated costs to be born by the homeowner where construction is taking place, required resubmission of a landscape plan with 75% native plant material, including trees and vegetation enhancements to the public right of way, and required reimbursement to the City for the cost of the Arborist Report, by the following roll call vote:

AYES: BERLING, MYERS, CADDELL
NOES: NONE
ABSENT: MOSLEY
RECUSED: SAROYAN

Vice Chair Saroyan returned to the meeting at this time.

ORDERS OF BUSINESS**Item 6: Forester's Report for July 2020**

The City Forester provided the Staff Report for this item.

Item 7: Public Works Director's Monthly Report for July 2020

The Public Works Directors provided the Staff Report for this item.

The following members of the public spoke:
Karen Ferlito

Chair Caddell adjourned the meeting at 6:45 p.m.

APPROVED:

ATTEST:

Michael Caddell, Chair

Britt Avrit, MMC
City Clerk

FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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ELIZABETH R. LEITZINGER
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SAMUEL B. BEIDERWELL
BRADLEY J. LEVANG
ASHLEY E. CAMERON
TYLER C. MORAN
CHRISTOPHER M. LONG

ALEX J. LORCA

September 14, 2020

ALorca@fentonkeller.com

ext. 258

VIA EMAIL ONLY (CITYCLERK@CI.CARMEL.CA.US)

Carmel City Council
Monte Verde Street
Carmel-By-The-Sea, CA 93923

Re: Stepanek Appeal of Forest and Beach Commission Decision
Our File: 35879.35184

Dear Members of the City Council:

Our firm represents Jaroslav Stepanek in connection with his project to demolish the existing residence, and construct a new residence in its place ("Project"), on Guadalupe Street at 4 Northeast of 3rd Avenue ("Project Site").

The purpose of this letter is to present Mr. Stepanek's appeal (the "Appeal") of a decision by the City's Forest and Beach Commission ("Commission") made at its August 20, 2020 meeting regarding a Stop Work Order issued for the Project by the City. The Appeal is set for hearing at the Council's regular October meeting.¹

I. INTRODUCTION AND BACKGROUND

Mr. Stepanek has been in business as a licensed contractor since 1986. During this time, Mr. Stepanek has successfully completed over 200 commercial and residential projects in Carmel, and over 400 projects on the Peninsula in total. Mr. Stepanek has never had a Stop Work

¹ Mr. Stepanek reserves his right to augment the Appeal pending review of documents City Hall will produce pursuant to a Public Records Act request made on his behalf by this office.

Carmel City Council
 September 14, 2020
 Page 2

Order issued on any of his projects due to damage to the urban forest, or run afoul of any state or local rules or regulations.

A. The Project

The Project involves the demolition of the existing residence on Guadalupe Street at 4 North East of Third Avenue, and the construction of an 1800 square foot residence in its place. At present, the existing residence has been demolished, the trenches for the new foundation have been dug, and the new foundation has recently been poured.

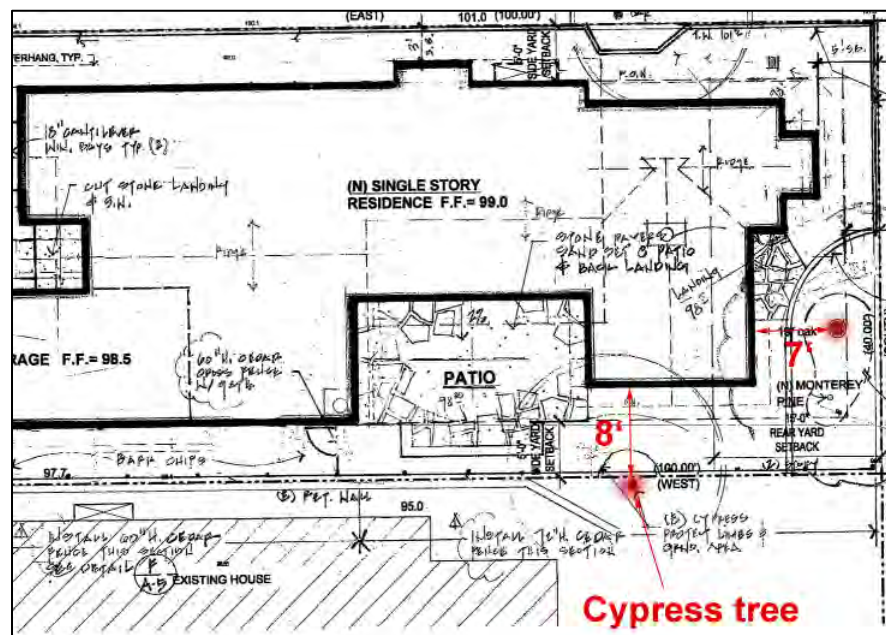
Relevant to this Appeal are two trees on the Project Site. One is an Oak tree, identified as Tree #4, below, which has been removed. The other is a Monterey Cypress tree (the “Cypress Tree”), identified below as Tree # 2.



Figure 1.

Site plan for 10100 S. 101st Ave. showing property boundaries, existing structures, and proposed removals. The plan includes dimensions, setbacks, and labels for 'EXISTING HOUSE TO BE REMOVED', 'EXISTING HARDSCAPE TO BE REMOVED', 'EXISTING GARAGE TO BE REMOVED', and 'EXISTING HOUSE'. It also indicates 'TO REMAIN' areas and 'REMOVED' trees (Oak and Cypress).

The following shows the location of the two relevant trees in relation to the *new* residence.



{AJL-01029368;1}

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During the demolition and excavation phases of the Project, Mr. Stepanek followed all City regulations, including performing excavation by hand within six feet of the Cypress Tree (Tree # 2) and the Oak tree (Tree #4) as required by the City. During this time, City Forester Sara Davis was present at the Project Site daily to supervise the entire process. At no time did she object to any aspect of the demolition or excavation.

During the hand excavations, a root of the Cypress Tree measuring 2-3 inches in diameter was exposed. After Ms. Davis determined the root was not viable, she cut it. This was the **only** root of the Cypress Tree that was cut. In fact, because the existing garage was built before the Cypress Tree existed, the garage prevented the Cypress Tree's roots from reaching the vicinity where the new residence was to be built. (See Figure 2.)

The following photograph shows the excavation in front of the Cypress Tree where the garage previously stood. As can be seen, the excavation exposed no roots.



Figure 4

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Moreover, the existing garage sat on a concrete foundation, which precluded root-growth in the excavation area. Figure 5 shows the garage previous to the start of the Project. The Cypress Tree can be seen at the right-hand side of Figure 5, as can the concrete foundation.



Figure 5.

In August, the City Forester abruptly inspected the Oak Tree (Tree #4) and issued a Stop Work Order as some of the roots appeared damaged. Why she suddenly chose to inspect the Oak tree is unknown.. In order to assess the situation, the City retained the services of West Coast Arborist, Inc., which issued a report, dated August 13, 2020, on the condition of the various trees on the Project Site (the “WCA Report”).

B. Neighbor Mo Massoudi’s Failed Attempts to Stop the Project

The neighbor immediately to the South of the Project Site is Mo Massoudi, a former Commission member. When the application for the Project was submitted in 2018, Mr. Massoudi vehemently opposed the Project citing possible noise impacts from the new patio (notwithstanding the fact that the new patio would be in the same location as the old patio). So strong was Mr. Massoudi’s opposition to the Project, he appealed it all the way to the City Council.

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Like the appeals below, the City Council unanimously denied Mr. Massoudi's appeal, and found in favor of Mr. Stepanek and the Project. Throughout the various appeals, Mr. Massoudi's disdain for the Project was evident.

C. Mr. Massoudi has Long Wanted the Cypress Tree Removed

On several occasions, Mr. Massoudi has expressed his desire to remove the Cypress Tree and his past actions demonstrate this intent. The following photograph shows drastic pruning of the Cypress Tree directed by Mr. Massoudi.



Figure 6.

It is unknown if Mr. Massoudi obtained permits for the pruning done to the Cypress Tree.²

² A Public Records Act request has been submitted to City Hall requesting all records relating to Mr. Massoudi's pruning of the Cypress Tree.

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II. THE FOREST AND BEACH COMMISSION HEARING

In the lead-up to the Commission meeting on August 20, 2020, Mr. Stepanek observed members of the Commission on his property (without his permission and without his advance knowledge) looking at the various trees on the Project Site. City Forester Sara Davis also reported seeing Commission members on the Project Site. It is unclear if these *de facto* site visits were disclosed at the hearing.

The August 20, 2020 Commission meeting was ostensibly to review the Stop Work order that was issued in response to root damage allegedly seen on the Project Site. However, the Commission meeting quickly turned in to the Commission members, along with Mr. Massoudi, ganging up on Mr. Stepanek. While Mr. Stepanek was only given the standard three minutes to speak to the Commission, Mr. Massoudi was not limited in the amount of time he spoke.

Importantly, it was Mr. Massoudi who championed the idea of removing the Cypress Tree during the hearing – even going so far as to insist he be given the option to select who would remove it.³ This was clearly an attempt by Mr. Massoudi to have Mr. Stepanek pay for the removal of the Cypress Tree that Mr. Massoudi has long wanted removed. Also, it was clear Mr. Massoudi's desire to punish Mr. Stepanek at the hearing was a continuation of his ongoing objection to the Project.

A. The Commission Failed to Use the Required Criteria Tree Removal

The minutes of the Commission's August 20, 2020 meeting were adopted by the Commission at its September 10, 2020 meeting. The minutes of the August 20th meeting, along with the archived video, clearly reflect the fact that the Commission didn't bother to use the required criteria for determining whether the Cypress Tree should be removed. As such, it failed to proceed in a manner required by law.

B. The Commission's Actions were Motivated by Politics

As noted above, Mr. Massoudi is a former member of the Commission and, as Mr. Stepanek understands it, still has influence over some current Commission members. As a former member of the Commission, Mr. Massoudi should have been aware that any decision to remove a protected tree required a full analysis under the City's Forest Management Plan. However, Mr. Massoudi never mentioned as much, preferring to use the hearing as a way to punish Mr. Stepanek for the Project he has objected to since its application was submitted to the City, and obtain removal of the Cypress Tree he has long wanted removed – at Mr. Stepanek's expense.

³ Mr. Stepanek has submitted a Public Records Act request to determine Mr. Massoudi's involvement in the City's enforcement decisions, if any.

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III. THE APPEAL

A. Standard of Council's Review

There is nothing in the Carmel Municipal Code to suggest the City Council must give deference to the decision of the Commission. Therefore, the Council's review of this appeal is *de novo*; that is, the Council cannot give deference to the Commission's decision. Instead, the Council must hear this matter anew and consider only the evidence presented during the Appeal.

B. A Site Visit is Required to Fully Understand the Project

Despite a site visit being listed on the Commission's agenda for its August 20th meeting, the Commission refused to visit the Project Site. This action was in contrast to the usual practice of the Commission to visit the site of matters on its agenda.

The City Council must perform a site visit to fully understand the Project, as well as to see the issues at play in this Appeal.

C. The City's General Plan Directs the Preservation of Trees

The City's General Plan provides that the urban forest gives Carmel "its character of a village among the trees." (See Open Space and Conservation Element of the City's General Plan at page.) "Residential designs shall maintain Carmel's enduring principles of modesty and simplicity and preserve the City's tradition of simple homes *set amidst a forest landscape*. (See Land Use Element of General Plan at "Residential Development" Policy P1-40; emphasis added.)

Goal G9-13 of the City's Forest Management Plan is to, "[p]reserve and enhance the City's legacy of an urbanized forest of predominantly Monterey pine, coast live oak and **Monterey cypress**." (Emphasis added.)

The Land Use Element of General Plan at "Residential Development" Policy P1-42 requires design plans for most new construction projects. The design plan must include, *inter alia*, "existing tree and structures." It goes on to state that "[u]sing this site plan, the City's planning staff and City Forester shall prepare a preliminary site assessment that includes an evaluation of the design character, streetscape attributes, potential historic resources, and forest resources of the block and neighborhood as well as the resource constraints of the site." With respect to the urban forest, Policy P1-42 states, "[t]he Plan shall address the impacts of the proposed development on the existing forest conditions of the site." (*Id.*)

Importantly, during the permitting stage of the Project, the City *never* indicated the Cypress Tree should be removed, or that it would be a problem.

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D. Removal of the Cypress Tree is Prohibited under the City's Forest Management Plan

The removal of trees in the City is specifically regulated by the "Criteria/Consideration for Review of Tree Removal/Pruning Applications" (the "Removal Criteria"), located at Appendix E of the City's Forest Management Plan. The Commission failed to make the findings required by the Removal Criteria; in fact, it didn't even bother to mention the Removal Criteria. As such, the Commission failed to proceed in a manner required by law.

What follows is the mandatory analysis for the removal of the Cypress Tree under the Removal Criteria. In order to properly perform the analysis, Mr. Stepanek retained Master Arborist Frank Ono, who issued the enclosed report dated August 31, 2020 (the "Ono Report") that clearly shows removal of the Cypress Tree is not permitted pursuant to the Removal Criteria.

City of Carmel Forest Management Plan – Appendix "E" "Criteria/Consideration for Review of Tree Removal/Pruning Applications"	
Criteria	Evidence
SAFETY: Does the tree have any structural impairment that is likely to cause tree failure?	With respect to the Cypress Tree, the Ono Report clearly states, "[o]ur tree risk assessment found the overall risk rating for the tree was moderate, which is reduceable to low with crown reduction in crown cleaning. This is based on personal experience with similar trees and the fact that no structural roots were damaged on this tree. (Emphasis added.) Likewise, the WCA Report confirms. "...I believe the tree could be retained. A 30% crown reduction would reduce weight and stress on the root system, thus reducing likelihood of failure." (Note, this statement renders the WCA Report's recommendation to remove the Cypress Tree as unsupported by the evidence.)
HEALTH: Are insects or disease present that indicate the tree is declining and has a very limited life expectancy?	The Ono Report Makes no mention of any disease or insect problems with the Cypress Tree. The WCA Report confirms, "no pests or disease were visible." (WCA Report at page 3.)
SPECIES: Is this tree an indigenous species? Is it included on the Commission's recommended tree list? Is the tree compatible with the forest character of the neighborhood?	The Monterey Cypress (<i>Cupressus macrocarpa</i>) is indeed listed as an indigenous species in the City's Forest Management Plan. (See Tree Species List at Exhibit G.) Moreover, the Tree Species List states, "Monterey pines (<i>Pinus radita</i>) and cypresses (<i>Cupressus macrocarpa</i>) are the primary upper canopy trees of the forest and the planting of these species shall receive the greatest priority in appropriate situations." (<i>Id.</i>)

CONSTRUCTION IMPACTS: Is the tree likely to survive the impacts of construction activities? Are any special protection measures appropriate?	The Ono Report Finds that the Cypress tree is likely to survive the impacts of the Project because the structural root zone “was not encroached, as no major structural roots were found or severed.” (Ono Report at page 4.) In fact, the Ono Report makes clear that not only is the Cypress Tree likely to survive the impacts of the Project, the Project will actually <u>increase</u> the health of the tree. This is because the Project has removed the garage structure that was near the Cypress Tree, and will place the new building four feet further from the Cypress Tree, thus allowing the root protection zone to increase by four feet. (<i>Id.</i>)
TREE DENSITY: Will the number and mix of trees on this site and/or the neighborhood be consistent with the City's recommended tree density if this tree is removed? If not, are there planting opportunities to mitigate the tree's loss and will the recommendation be met on the site?	Removal of the Cypress Tree would be inconsistent with the City’s recommended tree densities. Appendix F-2 of the Forest Management Plan “Tree Density per Lot” states: “[t]o implement General Plan Goal 6-1, ‘To protect, conserve, and enhance the unique natural beauty and irreplaceable natural resources of Carmel and its sphere of influence; to conserve Cannel's available water sources; and to protect scenic routes and Corridors” the recommended replacement trees and plantings are: Lot Size up to 4000 square feet – 3 Upper Canopy Trees. Monterey cypress are listed as an upper canopy tree. (<i>Id.</i>) Here, the Cypress Tree is the only upper canopy tree on the Project Site. Removing it would leave the Project Site without any upper canopy trees, in contravention of the Forest Management Plan.
OTHER TREE AFFECTS: Will the removal of this tree adversely or positively affect other trees on this property or neighboring properties? Consider crowding, competition, wind buffeting, light and privacy screening.	The removal of the Cypress Tree will adversely affect other trees as the wind buffeting it currently provides will be removed.
SIGNIFICANCE: Is there some characteristic or combination of characteristics that cause a tree to be of such value that its loss will have a detrimental effect on the forest	As noted above, removing the Cypress Tree would be inconsistent with the City's Forest Management Plan, which directs the City to protect indigenous species like the Monterey Cypress.

and residents will be denied the amenities this tree affords them? Are there other significant trees on the site?	
PROPERTY DAMAGE: Are damage alleviation measures (notch the eaves, repair the deck or driveway, foundation repair, etc.) available to repair the damage and retain the tree? Damage to patios, walkways, driveways, decks, eaves and outbuildings is not always considered to be significant for tree removal alone. Leaf litter or being messy is not considered significant cause for removal.	There is absolutely zero evidence in the record that the Cypress Tree currently causes property damage, or will do so in the future.
NEW CONSTRUCTION: Is there a compelling reason to impact the significant trees?	As noted above, evidence in the record demonstrates that the Project has not, and will not, negatively impact the Cypress Tree. In fact, <i>the evidence suggests the Project will increase the health of the Cypress Tree due to the expansion of the Root Protection Zone</i> , which will be increased by four feet as a result of the Project. (See Figure 3.)

Clearly, there is no evidence in the record to suggest the Cypress Tree should be removed. Any decision by the Council to order the Cypress Tree removed would be made not for physical or biological reasons as only ***one*** two to three-inch root was cut on the 100-foot tree. Rather, such decision would be made for political reasons.

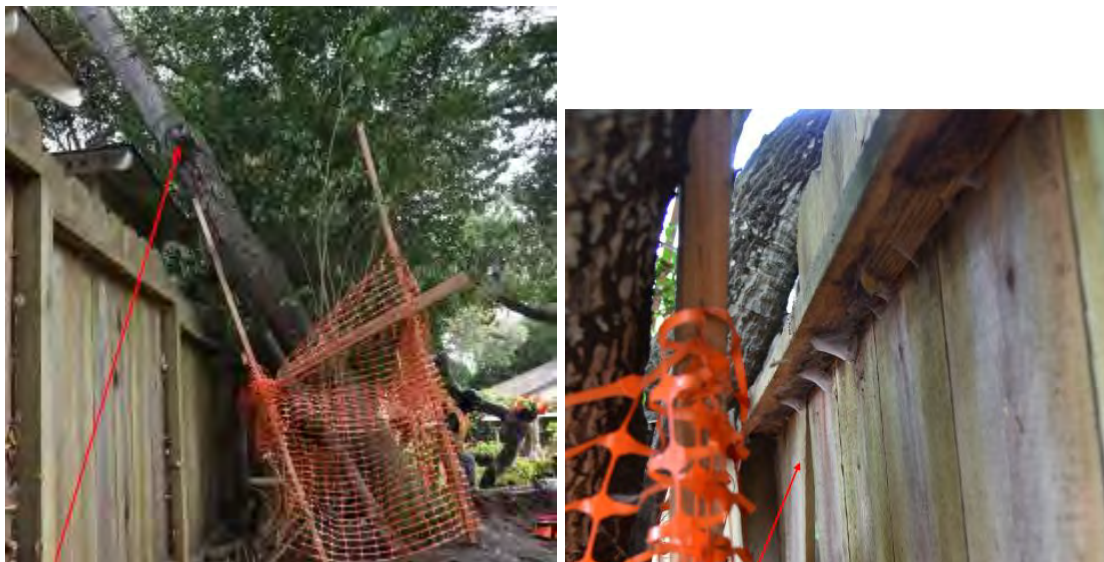
E. The Penalties Imposed by the Commission were Arbitrary and Capricious

1. Mr. Stepanek Took Responsibility for the Damaged Oak Tree

Tree #4, the Oak tree at the rear (eastern) property line of the Project Site had a severe easterly lean *prior to* the start of the Project and likely needed to be removed regardless of the Project. Mr. Stepanek took responsibility for the damage to Tree #4 and is willing to pay the \$6,200 replacement value of the tree. However, Mr. Stepanek objects to the imposition of a 3X penalty for damage to Tree #4 as it had a severe lean *before* the Project and likely needed

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removal anyway – as can be seen by the following photos. In fact, the neighbor onto whose property the tree was leaning expressed relief the tree was removed.



2. The \$50,000 Penalty is Outrageous

The \$50,000 penalty assessed by the Commission is unconscionable. Mr. Stepanek has taken responsibility for the damage done to Tree #4, and in addition will post the bond required by the Commission to ensure all trees on the Project Site continue to thrive. The Commission's decision to add a \$50,000 penalty was arbitrary and capricious as it made no attempt to quantify the reason for such an enormous amount.

IV. CONCLUSION

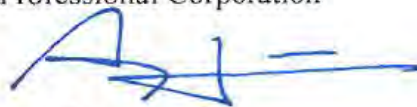
The record is completely devoid of any evidence to suggest the Cypress Tree should be removed, or that additional penalties are justified. From a physical and biological standpoint, both the City's contract arborist, as well as Mr. Stepanek's arborist, are of the opinion the Cypress Tree can be retained. A decision to order it removed would be contrary to the City's General Plan and Forest Management Plan. Likewise, the record does not support the arbitrary and capricious imposition of the \$50,000 penalty.

For the foregoing reasons, Mr. Stepanek respectfully requests the City Council: 1) find that the Cypress Tree be retained, and; 2) not impose any monetary penalty other than the replacement value (\$6,200) of Tree #4.

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Very truly yours,

FENTON & KELLER
A Professional Corporation

A handwritten signature in blue ink, appearing to read 'AJL', with a long horizontal stroke extending to the right.

Alex J. Lorca

AJL:kmc
Enclosure: Frank Ono Report
cc: Client

Frank Ono
International Society of Arboriculture
Certified Arborist # 536
Society of American Foresters Professional Member 48004
1213 Miles Avenue
Pacific Grove CA, 93950
Telephone (831) 373-7086

August 31, 2020

Mr. Jerry Stepanek
 3063 Larkin Road
 Pebble Beach, CA 93953

RE: Guadalupe 4NE of 3rd, Carmel CA -Cypress Tree Hazard Assessment

Mr. Stepanek;

You requested I perform a basic tree risk assessment of a Monterey cypress located on an adjacent property to the south. The assessment is to be used as part of an appeal of the decision by the Carmel City Forestry and Beach Commission regarding tree removal of an adjacent property cypress tree.

BACKGROUND

On August 6, 2020, we were contacted regarding construction excavation and soil disturbance at this site, Guadalupe Street, 4 Northeast of 3rd Ave, Carmel, CA 93923. At that time, the matter at hand was the removal of a leaning oak tree declared to be at imminent risk of failure, leading to a stop-work order being issued to the project. The project was ordered to be halted, the tree was removed, and the matter was brought to the Forest and Beach Commission. It was at the Commission meeting that an arborist report prepared by West Coast Arborists was submitted. The report discussed the leaning Oak, oak on the adjacent northern property, and the cypress tree on the southern adjacent property. A decision was rendered by the Commission to retain the adjacent northern property oak and to allow the Cypress tree on the adjacent southern property to be approved for removal (the cost to be burdened by Mr. Stepanek) due to questions to its stability. The West Coast Arborist report rated the tree at a moderate risk rating. Specifically, you wish to appeal the decision for the Cypress tree to be removed, as trespass did not occur on either site and that the cypress tree did not incur substantial root disturbance to render the tree an imminent hazard or risk requiring immediate abatement. The cypress tree is retainable if its crown is reduced and its canopy cleaned, which you wish to do rather than deprive the City of a sustainable forested resource.

SITE ANALYSIS

The site around the tree is disturbed with a previous excavation for a retaining wall on the property to the south with additional excavation for an electrical outlet at the base of the tree on its south side. On the Stepanek property and before the excavation, there was a small existing garage on a concrete slab that was removed which likely accounted for the lack of larger diameter roots found on the Stepanek property. The pre-existing structure and slab were approximately four (4) feet from the tree. The hand trenching performed to locate roots found a small root that was severed, as well as a small clay drainpipe. According to Mr. Stepanek, an approximately 4-inch root was cut on the excavation site of the tree by the city forester due to its lack of length and structural importance. The root extended a foot beyond the cut and likely was severed for construction of the previous structure on site. This corresponds with the study findings by Bruce Hagen, State Urban Forester. His study states “The large buttress roots which originate at the base of a tree rapidly decrease in diameter one to three meters (three to ten feet) from the base of the trunk. Few large roots are found beyond 10 feet from the trunk and much of a tree’s water-absorbing roots are under and close to a tree’s base (*Tree Roots-Major Considerations for the Developer*, Hagen)”. The remainder of the root zone consisted of smaller diameter fibrous roots, some of which was pruned back to allow the construction excavation of a building footing (the new proposed building is to be eight (8) feet from the tree. To my understanding, no other significant roots were found or severed.

Subject Tree

The tree is a Monterey cypress (*Hesperocyparis macrocarpa*, formerly known as *Cupressus macrocarpa*) measured with a 35” DBH (diameter at breast height). The tree appears healthy (except for some minor foliage dieback from shading), with no significant diseases or insect pests, and to have good vigor (tree vigor correlates with canopy position within the stand generally corresponding to its leaf and crown area). The tree is a dominant positioned tree with an appealing growth form. The cypress stands 75 feet tall (measured utilizing a Laser Ace Hypsometer) with a securely attached crown spread of 50 feet at its widest point from east to west, is located on the adjacent property to the south. It appears to be securely rooted with a corrected lean to the west. The root collar and trunk of the tree is well buttressed with columns on the north, east, and west sides of the tree. Though I did not step onto the property to view it from the south, I did see what appears to be well-buttressed areas on the trunk as well. The tree has a live crown ratio of over 50%.

In general, Cypress trees are valued for their extensive root system for erosion control and near the coast for its aesthetic appeal. It is composed of a primary well-defined taproot accompanied later by fast-growing lateral roots; surface roots are generally not considered a problem. The tree grows 70 to 90 feet in height and matures to a 30- to 40-foot spread in USDA zones 7 through 9. Monterey cypress roots tolerate sand to clay and well-drained, acidic to slightly alkaline soil. The anchoring roots provide good drought and wind resistance. They grow erect in inland plantings, the trees twist beautifully in coastal winds over time.

Evaluation of the Monterey cypress is based upon methodology consistent with established procedures as outlined by the Essentials of Forestry Practice (1987), through the established procedures outlined in the Guide for Plant Appraisal (10th edition), Reducing Infrastructure by Tree Roots (2003), Evaluation of Hazard Trees in Urban Areas (2nd Edition), and The Tree Risk Assessment Manual (2013) as the guides for judging the condition of landscape trees. Trees are evaluated by establishing points for roots, collar soundness, mechanical injury, girdling or kinked roots, compaction or waterlogged soil, toxic gasses, or presence of insects or diseases. The trunk of the subject tree was examined for sound bark and wood, cavities, mechanical injuries, cracks, swollen or sunken areas, presence of insects, or diseases. The canopy was examined for scaffold branches with strong attachments, decay, or cavities, whether or not it was well pruned, well-proportioned with tapered laterals, amount of wound closure, the amount of deadwood or fire injury, the presence of decay or diseases. The outer branches were examined for vigor or current shoots compared to previous years and if they were well distributed through the canopy. The buds or new growth were examined for color size and shape and the presence of dead or weak twigs and the presence of insects or diseases. Lastly, the foliage was examined for the size and color of its appearance, nutrient deficiencies, herbicide, pollutant, or chemical injuries, wilted or dead needles or leaves, and the presence of insects or diseases.

DISCUSSION OF TREE RISK

The City of Carmel-by the Sea is considered to be an urbanized forest as stated in the 2000 urban forest management plan prepared by Mike Branson. In the urbanized forest, trees are located in immediate proximity to people, buildings, vehicles, and countless moving and stationary targets. While the simplest means to reduce risk is to remove the target, that is not a practical reality in this urbanized setting. This particular cypress is a fabric of the urban forest and one of the major trees in the area. The decision to render this tree hazardous for removal appears that it does take into consideration the soil type, forest type, terrain, and current proven construction methods and procedures that are prevalent throughout the Monterey Bay area. Many examples exist in Carmel where healthy trees exist very close to buildings and/or building foundations. An excellent example is the Monterey cypress located in the driveway at Carpenter 2 SE of 2nd, Carmel-by-the-Sea, CA. This tree was seriously root pruned by for construction for a retaining wall before my involvement in 2011. After being contacted by the property owner who wished to retain the tree, we worked with the City forester, Mike Branson in efforts to retain the tree. It has now stood for nine years and has successfully endured several serious storms.

To that point, this design has shifted the new structure farther away from the tree than the pre-existing structure that was removed. If every tree that had roots disturbed, as in this case, were removed very few houses or roads in this city would exist in the City of Carmel. Our tree risk assessment found the overall risk rating for the tree was moderate, which is reduceable to low with crown reduction and crown cleaning. This is based on personal experience with similar trees and the fact that no structural roots were damaged on this tree.

Discussion of Structural Root Zone SRZ vs Root Protection Zone RPZ

There are two root areas or zones on any tree; the Structural Root Zone (SRZ) and the root protection root zone (RPZ). The SRZ is closer to the trunk, this is where the larger sized structural support roots are located. Encroaching into the SRZ places the tree at risk of catastrophic failure. In most tree upheavals regardless of the size of the tree, the soil ball (root plate) that goes over with the tree is generally within eight feet of the outside of the trunk. Calculations for the SRZ are obviously on an individual tree basis (species, location, age, etc.) where the SRZ is adjusted to compensate for existing structures and trees that co-exist. The SRZ is not the area the tree needs to survive; it is the area around the tree to ensure stability. In this case, the SRZ was not encroached, as no major structural roots were found or severed. The RPZ (Root Protection Zone) is further out where the finer feeder and hairy absorbing root system is located. It is those smaller finer roots that gather the resources for tree survival, they usually dominate the top 12.5" of soil and often travel far further than the drip line of the tree. The adequate area has to be provided and cared for, for those roots to sustain the tree. An adjustment was made compensating for reduced RPZ because the pre-existing structure was four feet from the tree. The new Stepanek design increases the RPZ by four feet, placing the new building at eight feet from the tree.

CONCLUSION

The tree presents a moderate risk for failure, but with low residual risk. Removal of the retainable tree would be inconsistent with the city's vision and goals of an urbanized forest. To my knowledge, the lots are close to 4000 square feet or more requiring at minimum three upper canopy trees and one lower canopy tree. Pruning of the tree will safely retain this tree which is a significant upper canopy tree in the City's urbanized forest. Pruning will lower the risk rating and minimize residual risk, ensuring the retention of a valuable tree resource, consistent with the City's forest management plan and vision for the city.

Thank you very much and please feel free to call if there are any questions or if I can be of further assistance.

Sincerely,



Frank Ono

Certified Arborist # 536

Society of American Foresters # 048004

PHOTOGRAPHS



Subject Cypress tree, the stem is curved indication a corrected lean

Pre-existing structure adjacent to the tree



Pre-existing structure adjacent tree

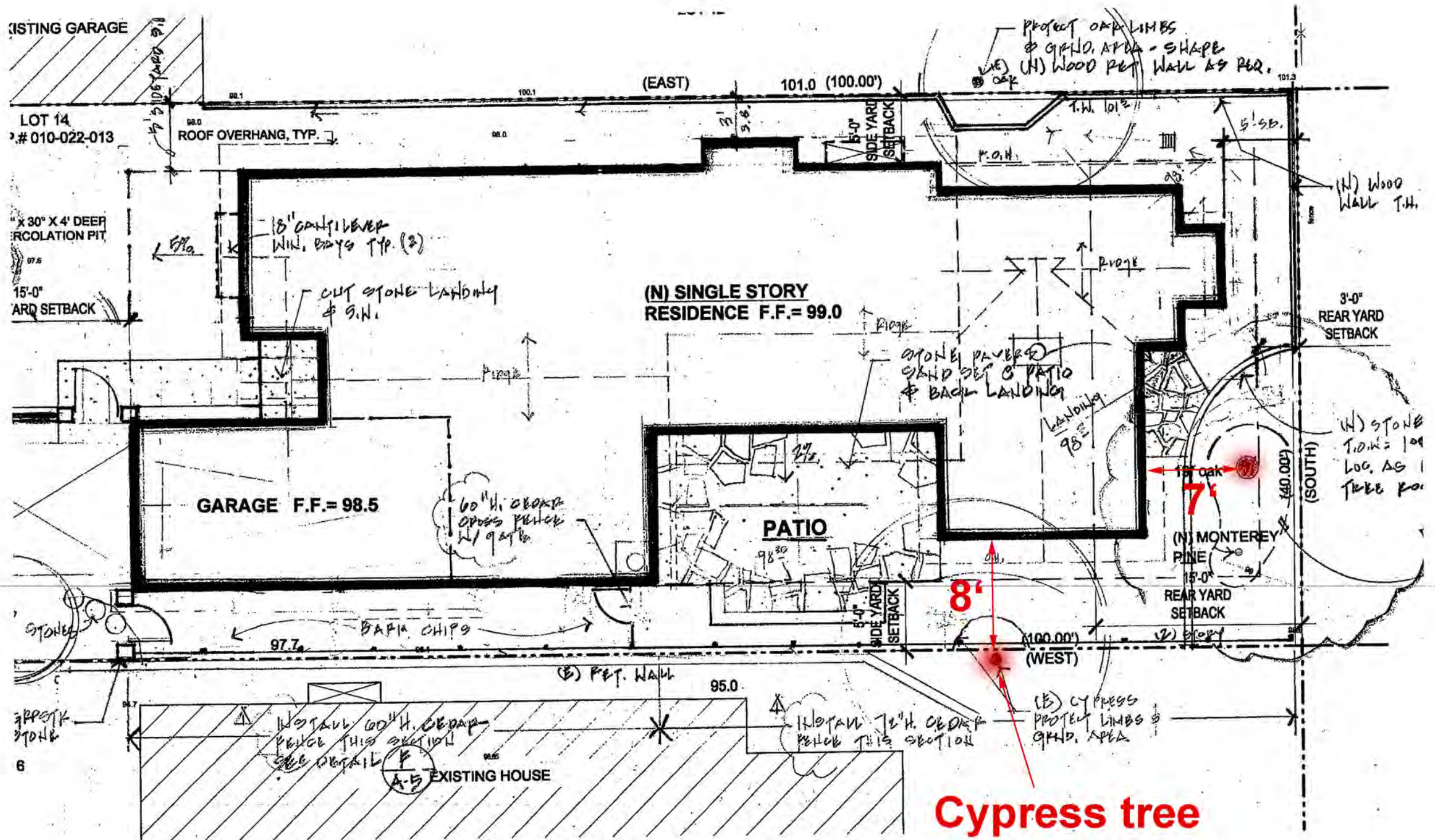


The base of the Cypress tree with buttressing. The depression at the root collar level is where there was a pre-existing wooden bulkhead removed that acted as a surface retaining wall.

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Basic Tree Risk Assessment Form

Client Stepanek Date 9/1/20 Attachment 12
Address/Tree location Guadalupe 4 NE of 3rd, Carmel Tree no. 1 Sheet 1 of 1
Tree species Monterey cypress dbh 35" Height 75' Crown spread dia. 50'
Assessor(s) Ono Tools used Laserace hypsometer Time frame 1 Year

Target Assessment

Target number	Target description	Target protection	Target zone			Occupancy rate 1 – rare 2 – occasional 3 – frequent 4 – constant	Practical to move target?	Restriction practical?
			Target within drip line	Target within 1 x Ht.	Target within 1.5 x Ht.			
1	House @ Guadalupe 3 NE of 3rd, Carmel, CA	None	x			Constant	no	no
2								
3								
4								

Site Factors

History of failures _____ Topography Flat ☐ Slope ☐ _____ % Aspect _____
Site changes None ☐ Grade change ☒ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☒ Describe excavation of fine roots
Soil conditions Limited volume ☐ Saturated ☐ Shallow ☐ Compacted ☐ Pavement over roots ☐ _____ % Describe Developed on both sides of tree
Prevailing wind direction NW Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe _____

Tree Health and Species Profile

Vigor Low ☐ Normal ☐ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal 90 % Chlorotic _____ % Necrotic 10 %
Pests/Biotic _____ Abiotic _____
Species failure profile Branches ☒ Trunk ☐ Roots ☐ Describe Cypress trees tend to shear apart at branch attachments

Load Factors

Wind exposure Protected ☐ Partial ☒ Full ☐ Wind funneling ☐ _____ Relative crown size Small ☐ Medium ☒ Large ☐
Crown density Sparse ☐ Normal ☐ Dense ☒ Interior branches Few ☐ Normal ☐ Dense ☒ Vines/Mistletoe/Moss ☐ _____
Recent or expected change in load factors _____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☒ LCR 70 %
Dead twigs/branches ☒ 10 % overall Max. dia. 1"
Broken/Hangers Number _____ Max. dia. _____
Over-extended branches ☒
Pruning history
Crown cleaned ☐ Thinned ☐ Raised ☒
Reduced ☐ Topped ☐ Lion-tailed ☐
Flush cuts ☐ Other side pruned over 3 NE of 3rd
Cracks ☐ Lightning damage ☐
Codominant ☐ Included bark ☐
Weak attachments ☐ Cavity/Nest hole _____ % circ.
Previous branch failures ☐ Similar branches present ☐
Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐
Conks ☐ Heartwood decay ☐
Response growth _____

Condition(s) of concern _____

Part Size 6" Fall Distance 40'

Load on defect N/A ☐ Minor ☒ Moderate ☐ Significant ☐

Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Nest hole _____ % circ. Depth _____ Poor taper ☐
Lean _____ ° Corrected? _____
Response growth buttress wood

Condition(s) of concern trunk snapping

Part Size 30" Fall Distance 40'

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐

Likelihood of failure Improbable ☒ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth _____ Stem girdling ☐
Dead ☐ Decay ☐ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ _____ % circ.
Cracks ☐ Cut/Damaged roots ☒ Distance from trunk 4'
Root plate lifting ☐ Soil weakness ☐
Response growth buttress wood

Condition(s) of concern root failure and whole tree failure

Part Size 30" Fall Distance 40'

Load on defect N/A ☐ Minor ☐ Moderate ☒ Significant ☐

Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

~~Attachment 12~~

Matrix I. Likelihood matrix.

A diagram of a simple cell. It features a large, clear circular vacuole on the right side, labeled "North" at the top. To the left of the vacuole is a smaller, darker circular nucleus. The cell is bounded by a thin, irregular line representing the cell membrane.

Notes, explanations, descriptions

1. Pruning - Thin and clean tree's crown.	Residual risk	Low
2. _____	Residual risk	_____
3. _____	Residual risk	_____
4. _____	Residual risk	_____

Overall residual risk None ☐ Low ☒ Moderate ☐ High ☐ Extreme ☐ **Recommended inspection interval** Yearly

Data ☒ Final ☐ Preliminary **Advanced assessment needed** ☒ No ☐ Yes-Type/Reason _____

Inspection limitations ☒None ☐Visibility ☐Access ☐Vines ☐Root collar buried Describe