



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

Mayor Dave Potter, Councilmembers Jeff Baron,
Alissandra Dramov, Karen Ferlito, and Bobby
Richards
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, August 6, 2024

Tour Time: 3:45 pm

Open Session: 4:30 pm

HYBRID MEETING ATTENDANCE OPTIONS

This meeting will be held in person and via teleconference ("hybrid"). The public is welcome to attend the meeting in person or remotely via Zoom, however, the meeting will proceed as normal even if there are technical difficulties accessing Zoom. The City will do its best to resolve any technical issues as quickly as possible. To view or listen to the meeting from home, you may also watch the live stream on the City's YouTube page at: <https://www.youtube.com/@CityofCarmelbytheSea/streams>. To participate in the meeting via Zoom, copy and paste the link below into your browser.

**<https://ci-carmel-ca-us.zoom.us/j/83289524838> Webinar ID: 832 8952 4838 Passcode:
904814 Dial in: (253) 215-8782**

HOW TO OFFER PUBLIC COMMENT

The public may give public comment at this meeting in person, or using the Zoom teleconference module, provided that there is access to Zoom during the meeting. Zoom comments will be taken after the in-person comments. The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received at least 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 made part of the record.

TOUR OF INSPECTION - 3:45 PM

Prior to calling the meeting to order, the Board/Commission will conduct an on-site tour of inspection of the properties listed on the agenda and the public is welcome to join. After the tour is complete, the Board/Commission will begin the meeting in the City Council Chambers no earlier than the time noted on the agenda.

- A. NW Corner of Sterling Way and Perry Newberry Way, Carmel (Das)

OPEN SESSION 4:30 PM

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

EXTRAORDINARY BUSINESS

- A. Hugh Comstock Proclamation

ANNOUNCEMENTS

- A. City Administrator Announcements
- B. City Attorney Announcements
- C. Councilmember Announcements
- D. Ad Hoc Committees - Report Out

PUBLIC APPEARANCES

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Appearances. Each person's comments shall be limited to 3 minutes, or as otherwise established by the Chair. Persons are not required to provide their names, however, it is helpful for speakers to state their names so they may be identified in the minutes of the meeting. Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. If a member of the public attending the meeting remotely violates the Brown Act by failing to comply with these requirements of the Brown Act, then that speaker will be muted.

ORDERS OF BUSINESS

Orders of Business are agenda items that require City Council, Board or Commission discussion, debate, direction to staff, and/or action.

1. Resolution 2024-067 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU
2. Resolution 2024-068 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU
3. Resolution 2024-069 of the City Council of the City of Carmel-by-the-Sea amending the At-Will (Unrepresented) salary ranges to incorporate and align with Cost of Living Adjustments (COLAs) for the Management (LIUNA) Unit, in accordance with Municipal Code 2.52.520, effective August 1, 2024
4. Resolution 2024-070, authorizing the City Administrator to execute a Construction Contract with Pro-Ex Construction, Inc., in the amount, with a 15% contingency, of \$168,360 for the Sunset Center Cottages Window Repairs Project
5. Review the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library and the list for the Architect Selection Committee
6. An update on development of the City's Accessory Dwelling Unit (ADU) Ordinance.
7. Consider directing staff and the Forest and Beach Commission to explore a policy, prior to the end of 2024, that would balance the pickleball and tennis activities at

Forest Hill Park with the surrounding residential uses.

PUBLIC HEARINGS

1. APP 24117 (Rodriguez) - Consideration of an Appeal of the Historic Resources Board's decision to add an individual property known as the "Henry J. Ohloff House" located at Camino Real 4 northwest of 11th Avenue to the Carmel Inventory of Historic Resources. APN: 010-275-006. **RECOMMENDED FOR CONTINUANCE**
2. PERM EN 23-242 (Maxcy-Levy) - Consideration of a Permanent Encroachment Permit application, PERM EN 23-242 (Maxcy-Levy), for the installation of pavers in the public right-of-way, fronting a single-family residence located at Camino Real 3 northwest of 8th Avenue. **RECOMMENDED FOR CONTINUANCE.**
3. **PERM EN 240031 (Das)** - Consideration of a Permanent Encroachment Permit application, PERM EN 240031 (Das), for the legalization of, and modification to, existing encroachments in the public right-of-way, adjacent to a single-family residence located at the northeast corner of Sterling Way and Perry Newberry Way.

FUTURE AGENDA ITEMS

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, located on the NE corner of Ocean Avenue and Lincoln Street, 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> in accordance with 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).

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

**A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
CELEBRATING THE 100TH ANNIVERSARY OF THE FIRST STORYBOOK COTTAGE CONSTRUCTED BY
HUGH W. COMSTOCK IN CARMEL-BY-THE-SEA**

WHEREAS, in 1924, Hugh White Comstock traveled to Carmel-by-the-Sea and married Mayotta Browne, creator of the popular Otsy Totsy rag dolls; and

WHEREAS, later that same year, Mr. Comstock designed and constructed a small fairytale cottage he called *The Doll House* and more recognized today as *Gretel* where he and his bride lived as newlyweds; and

WHEREAS, in 1925, Mr. Comstock designed and constructed another fairytale cottage which came to be known as *Hansel*, which served as a showroom for his wife's Otsy Totsy rag dolls; and

WHEREAS, the design and construction of the *Hansel and Gretel* cottages was the birth of the Storybook-style cottage in Carmel-by-the-Sea; and

WHEREAS, many residents who saw the enchanting and quaint cottages requested similar houses, which led to Comstock's career as a designer-builder; and

WHEREAS, sixteen Storybook-style cottages designed by Mr. Comstock are recognized on the City of Carmel-by-the-Sea's local historic inventory; and

WHEREAS, the fairytale cottages are a local treasure and world-renowned, drawing visitors from across the globe.

NOW, THEREFORE, BE IT PROCLAIMED THAT I, David Potter, Mayor of the City of Carmel-by-the-Sea, on behalf of the City Council and the residents of Carmel, hereby celebrate the 100th Anniversary of the first storybook cottage designed and constructed by Hugh White Comstock in Carmel-by-the-Sea.

August 6, 2024

Dave Potter, Mayor



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

August 6, 2024
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Brandon Swanson, Assistant City Administrator
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2024-067 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU

RECOMMENDATION:

Adopt Resolution 2024-067 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU.

BACKGROUND/SUMMARY:

The MOU between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit) expired on June 30, 2024, the terms of which are still in effect unless and until a successor MOU is adopted. At the direction of the City Council, City management and staff have been meeting and conferring with LIUNA/UPEC, Local 792 (General Unit) for several meetings in accordance with the Meyers-Milias-Brown Act, Government Code section 3500 *et seq.* ("MMBA").

The parties have reached a tentative agreement on terms for a successor MOU. Through a member vote, LIUNA/UPEC, Local 79 (General Unit) has approved the terms of the tentative agreement pursuant to its bylaws and the MMBA. Notable provisions of the tentative agreement include:

Term:	two years (July 1, 2024 through June 30, 2026)
Compensation:	4% base wage increase July 1, 2024, 4% base wage increase July 1, 2026
	5% Longevity Pay premium for employees with 10 continuous years of service with City
	\$100 maximum monthly Advanced Certification/License Pay for certifications/licenses that provide long-term cost savings to City
Health Benefit:	City coverage of 100% premium for lowest-cost PPO or HMO plan offered

This recommendation aligns with the City's goals of compensating its employees at a competitive and fair level in light of the relevant labor market, while encouraging employees to maintain long-term employment with the City so as to provide knowledgeable and first-class municipal services to the City's residents and visitors.

Accordingly, staff recommends that the City Council approve a Resolution (**Attachment 1**) adopting a successor memorandum of understanding with LIUNA/UPEC, Local 79 (General Unit) for the period of July 1, 2024 through June 30, 2026, authorize the City Administrator to execute said successor memorandum of understanding on behalf of the City (**Attachment 2**), and adopt an updated salary plan for the relevant classifications in accordance with Municipal Code section 2.52.520 (**Attachment 3**).

FISCAL IMPACT:

The General (LIUNA) Unit's annual payroll is \$2,296,257. Year 1 salary increase (4%) is \$91,850. Year 2 salary increase (4%) is \$95,524. The recently approved FY 24/25 Budget includes sufficient appropriations for the revised salary schedule. The fiscal impact does not reflect the increases to the CalPERS pension liability (UAL).

PRIOR CITY COUNCIL ACTION:

There has been no open-session review by the City Council for this item.

ATTACHMENTS:

Attachment 1) Resolution 2024-067

Attachment 2) Exhibit A - General Unit MOU

Attachment 3) Exhibit B - General Unit Salary Schedule

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

RESOLUTION NO. 2024-067

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY AND LIUNA/UPEC, LOCAL 792 (GENERAL UNIT) AND ADOPTING THE CLASSIFICATIONS SALARY PLAN IN ACCORDANCE WITH MUNICIPAL CODE 2.52.520 AS OF JULY 1, 2024

WHEREAS, the current Memorandum of Understanding (MOU) between the City and employees represented by the LIUNA/UPEC, Local 792 (General Unit) expired on June 30, 2024; and

WHEREAS, the City has been in negotiations with LIUNA/UPEC, Local 792 (General Unit) regarding salaries and other terms and conditions of employment; and

WHEREAS, the City and the LIUNA/UPEC, Local 792 (General Unit) have reached a tentative agreement which is embodied in the attached Memorandum of Understanding for the period of July 1, 2024 through June 30, 2026; and

WHEREAS, Municipal Code 2.52.520 and amendments thereto provide, among other things that the City Council establish the legally current salary range from the salary schedule for each class of position; and

WHEREAS, the salary resolution is adopted annually or periodically by the City Council upon review and recommendation of the City Administrator; and

WHEREAS, the California Public Employee's Retirement Law, at Section 570.5 of the California Code of Regulations Title 2, requires the City to publish pay rates and ranges on the City's internet site and the City Council to approve the pay rates and range in its entirety each time a modification is made.

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

1. Authorize the City Administrator to execute the Memorandum of Understanding between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit) (Exhibit A);
2. Authorize and approve the City Administrator to establish the pay rates/schedule for LIUNA/UPEC, Local 792 (General Unit) (Exhibit B).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk

RESOLUTION 2024-067

EXHIBITS

Exhibit A - Memorandum of Understanding between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (General Unit)

Exhibit B - Pay rates/schedule for LIUNA/UPEC, Local 792 (General Unit)

MEMORANDUM OF UNDERSTANDING

Between the

City of Carmel-by-the-Sea

And the

Carmel-by-the-Sea General Unit

For the period

July 1, 2024 through June 30, 2026

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**Memorandum of Understanding
between
The City of Carmel-by-the-Sea
and
City of Carmel-by-the-Sea General Unit**

ARTICLE 1: PREAMBLE

This Memorandum of Understanding (MOU) is made and entered into between the City of Carmel-by-the-Sea, hereinafter referred to as “City,” and the Laborers’ International Union of North America, United Public Employees of California, LIUNA/UPEC, Local 792, hereinafter referred to as “Union” pursuant to California Government Code Section 3500 et seq. The purpose of this MOU is the establishment of rates of compensation, hours of work and other terms and conditions of employment. Existing practices and/or benefits which are not referenced in this MOU and which are subject to the meet and confer process shall continue without change unless modified subject to the meet and confer process.

ARTICLE 2: RECOGNITION

2.1 The City of Carmel-by-the-Sea recognizes the Union as the exclusive representative for the following full time and regular part-time positions in accordance with Article 2.52.055 of the Carmel Municipal Code for the following classifications.

1. Administrative Coordinator
2. Assistant City Forester
3. Assistant Planner
4. Building Inspector
5. Facility Maintenance Specialist*
6. Circulation Supervisor
7. Code Enforcement Coordinator
8. Community Activities Assistant
9. Finance Analyst
10. Finance Specialist
11. Financial Services Coordinator
12. Forest Care Worker
13. IT Technician
14. Librarian I
15. Librarian II
16. Library Assistant
17. Maintenance Worker I/II
18. Maintenance Worker III
19. Permit Technician
20. Planning Technician
21. Program Supervisor — Community Activities**
22. Streets Supervisor
23. Tree Climber and Care Specialist
24. Administrative Coordinator (part time/temporary)

- 25. Community Administrative Assistant I (part time/temporary)
- 26. Finance Specialist (part time/temporary)
- 27. Forest Care Worker (part time/temporary)
- 28. Librarian I (part time/temporary)
- 29. Library Assistant (part time/temporary)
- 30. Maintenance Worker I (part time/temporary)
- 31. Maintenance Worker II (part time/temporary)
- 32. Tree Climber and Care Specialist (part time/temporary)

* Official classification on file is Building (Facility) Maintenance Specialist.

** Official classification on file is Program Supervisor – Recreation.

2.2 Notwithstanding any other provisions in this MOU, part time/temporary hourly positions are not entitled to any other compensation or benefit not specifically listed herein.

ARTICLE 3: TERM OF CONTRACT

3.1 The term of this MOU shall be from July 1, 2024 through June 30, 2026.

ARTICLE 4: COMPENSATION

4.1 Wages:

Effective July 1, 2024, the hourly rate salary steps for all classes in this bargaining unit shall be increased by four percent (4%). Effective July 1, 2025, the hourly rate salary steps for all classes in this bargaining unit shall be increased by four percent (4%).

For Assistant Planner classification only, effective upon City Council ratification, the hourly rate salary step shall be increased by ten percent (10%).

4.2 Bilingual Pay Differential Eligibility (Spanish):

A. Any certified bilingual (Spanish) speaking person employed in a designated public contact position, who has been assigned duties in writing involving regular and frequent use of bilingual skills, shall be eligible to receive one-hundred dollars (\$100) per month.

B. Regular and frequent use shall mean using the skill on the average of once per workday. However, exceptions can be made at the discretion of the Department Head with the concurrence of the City Administrator.

C. The bilingual differential allowance shall cease when the position is no longer determined as requiring bilingual skills or the employee is assigned to a position which does not require bilingual skills.

D. An employee who is on leave of absence without pay during a pay period shall receive the bilingual differential in proportion to the relationship of the time worked during that pay period bears to eighty (80) hours.

4.3 Out of Class Pay:

The purpose of this provision is to provide for compensation of an employee who is properly assigned in writing to perform the significant duties of a higher classified position for relief necessitated by the temporary vacancy caused by the incumbent's absence or pending the filling of a vacant position beginning on the second full pay period of such assignment and continuing for the duration of such assignment, but not to exceed six months (pursuant to CalPERS regulations).

Out of class pay will be provided when the following conditions are met:

1. There is a vacant position specifically allocated to the department.
2. The assignment will require the duties of the position to be performed by the individual for a period of not less than two (2) pay periods.
3. The class to which the employee is assigned must have a top salary step of at least 5% above the top step of the employee's current class.
4. The assignment and the duration of the assignment is made by the department head in writing specifying the period of the temporary assignment and is approved by the City Administrator.
5. The employee must satisfactorily perform the essential functions of the job class to which that employee is assigned.
6. The employee meets the minimum qualifications identified in the job description of the classification being assigned.

Such temporary assignment shall not be considered a promotion. The individual shall receive either a five percent (5%) premium or Step 1 of the class assigned, whichever is greater.

If the employee receives between five percent (5%) and seven-and one-half percent (7.5%) out of class pay, the employee will continue to be eligible to earn overtime as would have been earned in the employee's regular class. If the employee receives out of class pay greater than seven-and one-half percent (7.5%), and is assigned to an FLSA exempt position, the employee will not be eligible for overtime pay, but will receive pro-rated management leave based on the duration of the assignment.

The out of class pay shall cease when any of the following occur:

1. The absent incumbent returns to duty.
2. The vacant position is filled.
3. The assignment is terminated in writing by the appointing authority, whichever occurs first.

Under no circumstance may any out of class assignment continue longer than six months in any one fiscal year.

4.4 Advanced Certification/License Pay

As recommended by a Department Head and subject to approval by the City Administrator in his/her sole discretion, the City shall provide fifty dollars \$50 per month to employees for each certification that provide added benefit to the City in the form of identified long-term cost savings to the City through reduced reliance on third-party consultants or contractors. Certifications or licenses eligible for this benefit are those that are beyond the certification or licenses required for the position. Each employee shall be eligible for a maximum certification pay of \$100, or two certifications or licenses. The Parties agree that topics of eligible types of certifications or licenses, as well as considerations such as caps on numbers of employees authorized to receive a type of pay will all be included in the Joint Labor Management Committee meetings intended to take place during the term of this Agreement, pursuant to Section 27.5 of this Agreement.

ARTICLE 5: EDUCATIONAL INCENTIVE PAY

5.1 Payment Established: The City Council, having determined the acquisition of additional education by employees makes those employees more valuable to the City, does hereby establish an Educational Incentive Pay Plan (EIP).

5.2 Definitions: For the purpose of this program, the following definitions shall apply:

5.2.1 Base Salary shall mean the monthly salary of the employee as established by the City Council and shall not include any overtime, holiday-in-lieu pay or allowances or other supplemental benefits.

5.2.2 Satisfactory Completion shall mean a grade of “C” or better in any course. No more than one-third (1/3) of the total number of units considered for EIP may be on a “credit only” or “pass/fail” basis (limit of 10 out of 30 units or 20 out of 60 units). Units earned with a “Credit Minus” grade will not be considered eligible under the EIP program.

5.3 College Level shall mean any post-high school educational institution accredited by the California State Department of Education, the Western Association of Schools and Colleges, or by equivalent organizations in other states and countries, or which have the prior approval of the City Administrator.

5.4 Job-Related shall mean any college level course related to technical or specialized aspects of the employee’s position, as well as courses meeting general educational degree requirements, which are reasonably job-related. The City Administrator’s determination of the eligibility of any course shall be final and shall be obtained prior to taking a course.

5.5 Units shall mean semester units (two semesters to a full academic year). Each quarterly or trimester unit shall be counted at a value of .67% of a semester unit.

5.6 Rates of additional compensation:

5.6.1 Academic Education. Upon satisfactory completion of 30 units of college level related courses, the employee shall receive a salary increase equal to two and one-half percent

(2.5%) of their base salary. Upon attainment of 60 units or the attainment of an Associate Degree, the employee shall receive a salary increase equal to five percent (5%) of base salary.

5.6.2 Non-Academic Training or Instruction. For eligible employees, the City Administrator, upon recommendation of the Department Manager, may grant prior approval for a course of instruction or training, which would lead to the attainment of EIP. The City Administrator shall be guided in this determination by the value to the City of the employee's knowledge and/or skill accumulation, and by the employee's expenditure of time and effort as compared to that put forth by an employee earning the same level of EIP by the accumulation of college-level units (at approximately 30 to 54 hours per college unit).

5.6.3 In no case shall the EIP rate of compensation exceed five percent (5%).

5.7 Eligibility: In order for employees to be eligible for EIP, ALL of the following conditions shall be met:

5.7.1 A regular employee shall become eligible once successfully completing 18 months of continuous service to the City except that this period of time may be waived at the discretion of the City Administrator.

5.7.2 The education, training or instruction shall be acquired at times when the City does not compensate the employee. Reimbursement to the employee by the City for the costs of books, tuition, or supplies shall not affect eligibility. Scholarships or veterans' benefit shall not be considered compensation.

5.7.3 Credit shall not be given for work experience, even though an academic institution may have given credit for such experience, until such time as a degree is granted the employee by such institution.

5.7.4 The employee shall submit to the City Administrator through the Department Manager a list of courses and credits, together with transcripts or other proof of satisfactory completion, as may be required to verify the acquisition of claimed credits.

5.8 Time of payment: EIP shall be paid to eligible employees beginning with the pay period in which the City Administrator has approved the application for EIP.

5.9 All members shall maintain any license or certification required for his or her position by the Department of Transportation.

ARTICLE 6: CALPERS RETIREMENT PLAN

6.1 Tier I: Bargaining unit members hired on or before November 1, 2011.

6.1.1 The "2% at 55" retirement formula shall be available to bargaining unit members hired on or before November 1, 2011.

6.1.2 Final Compensation Based on 12-Month Period:

For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section mean the highest consecutive twelve (12) month period.

6.1.3 Required Member Contributions:

Bargaining unit members covered by this section shall continue to pay, through payroll deduction, the 7.0% member contribution.

6.1.4 Pension Cost Sharing:

In addition to paying the 7.0% member contribution, bargaining unit members covered by this Section shall pay, through payroll deduction, an additional 3.0% of PERSable compensation towards the City's costs, for a total contribution of 10% toward the normal cost of pension benefits, as permitted by Cal. Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election by unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Cal. Gov. Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the PERS contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City's amendment to the PERS contract, unit member contributions will be made pursuant to Cal. Gov. Code Section 20516. If the contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a PERS contract amendment as authorized by Cal. Gov. Code Section 20516(f). The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

6.2 Tier II: Bargaining Unit Members Hired After November 1, 2011, and Prior to January 1, 2013, and Unit Members Qualified for Reciprocity (Classic Members).

6.2.1 This Section (including subsections) shall apply to bargaining unit members hired on or after November 1, 2011, and prior to January 1, 2013. In addition, this Section shall apply to bargaining unit members hired on or after January 1, 2013, who are qualified for pension reciprocity as stated in Cal. Gov. Code Section 7522.02(c) and related CalPERS reciprocity (Classic Member) requirements.

6.2.2 The "2% at 60" retirement formula shall be available to bargaining unit members covered by this Section.

6.2.3 Final Compensation Based on Three-Year Final Average:

6.2.4 For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section shall be determined by the average of the final three years of the member's salary.

6.2.5 Required Member Contributions: Bargaining unit members covered by this section shall continue to pay, through payroll deduction, the 7.0% member contribution.

6.2.6 Pension Cost Sharing:

In addition to paying the 7.0% member contribution, bargaining unit members covered by this Section shall pay, through payroll deduction, an additional 3.0% of PERSable compensation towards the City's costs, for a total contribution of 10% toward the normal cost of pension benefits, as permitted by Cal. Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election by unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Cal. Gov. Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the PERS contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City's amendment to the PERS contract, unit member contributions will be made pursuant to Cal. Gov. Code Section 20516. If the contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a PERS contract amendment as authorized by Cal. Gov. Code Section 20516(f). The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

6.3 Tier III: PEPR Retirement Tier Required for Bargaining Unit Members Hired On or After January 1, 2013 (Non-Classic Members).

6.3.1 This Section shall apply to bargaining unit members who were hired on or after January 1, 2013, and who do not qualify for pension reciprocity (non-Classic Members) as stated in Cal. Gov. Code Section 7522.02(c).

6.3.2 2% at 62 Formula: The "2% at 62" retirement formula will be available to bargaining unit members covered by this Section.

6.3.3 Final Compensation Based on Three-Year Final Average Salary: For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section shall be determined by the average of the final three years of the member's salary.

6.3.4 Required Member Contributions: As required by Cal. Gov. Code Section 7522.04(g), effective January 1, 2013, bargaining unit members covered by this Section shall pay, through payroll deduction, fifty percent (50%) of normal costs.

6.3.5 Pension Cost Sharing:

In addition to paying 50% of normal costs as described above, bargaining members covered by this Section shall pay, through payroll deduction, an additional 3.0% of PERSable compensation toward the City's normal cost of pension benefits as permitted by Cal Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election of unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Government Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City's amendment to the CalPERS contract, unit member contributions will be made pursuant to Government Code Section 20516, Unit member Cost Sharing of Additional Benefits. If the

contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a CalPERS contract amendment as authorized by Government Code Section 20516(f). The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

6.4 As permitted by Internal Revenue Code Section 414(h)(2) and Government Code Section 20516, each unit member shall pay through payroll deductions the PERS contributions described in Section 6 with state and federal income tax on the PERS member contribution deferred to the extent permitted by law, including but not limited to, Internal Revenue Code, 26 USC Section 414(h)(2).

6.5 The City shall provide bargaining unit members with those optional benefits which it has elected to provide to bargaining unit members in its contract with CalPERS and in accordance with the Public Employees Retirement Law.

ARTICLE 7: UNION SUPPLEMENTAL RETIREMENT PLAN

7.1 Effective the first pay period after adoption by the City Council of this MOU, the City shall contribute \$1 per hour worked, excluding overtime, to the Laborer's International Union of North America, National (Industrial) Pension Fund, on behalf of each eligible employee who is: 1) represented by the Union, and 2) regularly scheduled to work twenty (20) hours or more per week.

ARTICLE 8: DEFERRED COMPENSATION

8.1 The City offers employees the opportunity to participate in a deferred compensation (457) plan on a voluntary basis through the payroll deduction plan. Participation and contributions are regulated by the rules and regulations established by the Internal Revenue Service (IRS) for such plan (457 Plans). Nothing in this section shall prohibit or restrict this voluntary participation, in the plan(s) offered by the City.

8.2 The City shall make monthly contributions on behalf of each eligible employee in the amount of \$25. In addition, effective with the first pay period following Council adoption of this Agreement, the City shall match up to \$50 per month of contributions made by the employee. In no case shall the City contribute in excess of \$75 per month to any individual employee's deferred compensation. It shall be the responsibility of the employee to specify the plan and investment option.

ARTICLE 9: UNIFORM REIMBURSEMENT

9.1 Effective the first day of the pay period following the City Council's approval of this agreement, the City will reimburse all represented Union employees for expenditures of up to \$300 per year for uniform items required for them to perform their jobs, and separately reimburse all represented Union employees for expenditures of up to \$350 per year for work boots required for them to perform their job. Employees shall provide receipts for all purposes for which they are requesting reimbursement.

9.2 Effective the first day of the pay period following the City Council's approval of this agreement, the City shall continue to provide uniforms to all represented Union employees who are required to wear them at no cost to the employee.

The uniform items and cost, including reimbursement costs, for all represented Union employees who are required to wear a uniform is set forth in Appendix "A." The parties agree that to the extent permitted by law, the monetary value of compensation for the cost of uniform items and reimbursement costs are special compensation and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(5) — Statutory Items.

ARTICLE 10: HOLIDAYS

10.1 The following 12 holidays shall be observed:

1. New Year's Day, January 1st
2. Third Monday of January (Martin Luther King Day)
3. Lincoln's Birthday, February 12th
4. President's Day, Third Monday of February
5. Memorial Day, Last Monday of May
6. Independence Day, July 4th
7. Labor Day, First Monday of September
8. Veterans' Day, November 11th
9. Thanksgiving Day, Fourth Thursday in November
10. Friday immediately following the Thursday in November designated as Thanksgiving
11. Christmas Eve, December 24
12. Christmas Day, December 25

10.2 In the event a holiday falls on a Saturday, Municipal Departments shall remain open on the preceding Friday, but employees shall be given either the preceding Friday or the following Monday, at the discretion of the Department Manager and City Administrator, as an in-lieu holiday. If a holiday falls on a Sunday, it shall be observed on Monday.

ARTICLE 11: GENERAL LEAVE

11.1 Each bargaining unit employee shall be entitled to two days (a maximum of 16 hours) of general leave per year during the period of the contract. The Department Manager shall approve use of general leave. General leave may not be accumulated from one year to the next.

ARTICLE 12: HOURS OF WORK

12.1 Workweek: The normal workweek shall consist of five (5) days, Monday through Friday, inclusive.

12.2 Workday: The normal workday shall consist of eight (8) consecutive hours of work within a maximum nine-hour period, interrupted by an unpaid lunch break of not less than one-half hour nor more than one hour. The normal workday shall fall within the hours between 7:00

a.m., and 6:00 p.m. Input from employees at each work site is welcomed. An employee shall be given seven (7) calendar days' notice before a change in the daily work schedule can be implemented.

12.3 Change in hours of Work: Should, in the judgment of the City, it be necessary to establish daily or weekly work schedules departing from the normal workday or the normal workweek for a period exceeding two (2) weeks, the City shall meet and discuss the proposed change with the Union at least ten (10) days in advance, except in cases deemed to be an emergency by the City Administrator.

12.4 Alternative Work Schedules: During the term of this Agreement the parties may mutually agree to meet and confer regarding alternative work schedule and notwithstanding subsections A and B above, the City and the Union may agree to establish alternative work schedules consisting of forty (40) hours in a work week or eighty (80) hours in a bi-weekly period. Alternative work schedules may be implemented on a Department-by-Department basis.

12.4.1 All full-time employees shall be scheduled to work eighty (80) hours within a nine (9) consecutive day period. The scheduled day off shall be either a Friday or Monday, providing that this work schedule for the library employees does not cause a reduction of hours the library is open to the public.

12.4.2 Rest Periods: During their normal eight (8) hour workday, employees will be granted two (2) fifteen (15) minute rest periods in the approximate middle of each half shift, which may be scheduled by the City.

ARTICLE 13: VACATION ACCRUAL PLAN

13.1 The following vacation accrual schedule shall be in effect:

1-4 years of service:	80 hours per year
5-10 years of service:	120 hours per year
11-15 years of service:	160 hours per year
15 years of service and over:	176 hours per year

13.2 Vacation accrual will be reflected in the City's books on a month-to-month basis in hours.

13.3 The maximum amount of vacation time that may be held in an unused status shall be the amount an employee is entitled to accrue in two (2) anniversary years. The department manager may grant exceptions with approval by the City Administrator.

13.4 The CITY agrees to recommend that the City Council eliminate Municipal Code 2.52.630 (Vacations: Eligibility of Use).

ARTICLE 14: VACATION BUY BACK

14.1 The parties agree that eligible members of the UNION will have the option, subject to approval by the City administrator, to sell up to forty (40) hours of accumulated vacation per

fiscal year to the CITY in exchange for compensation at the employee's current hourly rate in the fiscal year sold.

14.2 To qualify, an employee must have taken at least 40 hours of vacation in the 12 months prior to the request and have at least a one-year accrual balance remaining on the books after the sale of vacation hours.

ARTICLE 15: BEREAVEMENT LEAVE

15.1 Each member of the Union shall be entitled to twenty-four (24) hours of bereavement leave each fiscal year for serious illness, disability, or death in the employee's immediate family. If the employee exhausts the 24 hours of bereavement leave, the employee shall be permitted to use up to two days of accrued sick leave as bereavement leave. If the employee exhausts the 24 hours of bereavement leave and has used two additional days of sick leave, and experiences an additional incident qualifying for bereavement leave in the same calendar year, the employee shall be permitted to use up to an additional five days of accrued sick leave as bereavement leave.

15.2 Immediate family is defined as the employee's spouse, child, step-child, parent, stepparent, grandparent, sibling, mother-in-law, father-in-law, sister-in-law, and brother-in-law, registered domestic partner or any other person approved by the department manager. The department manager may require the employee furnish satisfactory proof to substantiate the use of bereavement leave. Bereavement leave shall not be subtracted from an employee's sick leave account and shall not accrue from one fiscal year to the next.

ARTICLE 16: SICK LEAVE

16.1 The City shall continue to grant each eligible employee of the Union eight (8) hours of sick leave per month. These days are to be used in accordance with the procedure(s) outlined below and in the Personnel Ordinance of the Municipal Code (Sections 2.52.660 — 2.52.685) of the City of Carmel-by-the-Sea.

16.2 Sick leave shall be charged against an employee's credit only for regular working days and shall not be charged for time absent on holidays or other authorized days off. Charges against an employee's credit shall be rounded off to the lowest hour.

For example:

<u>Time off work</u>	<u>Time charged</u>
59 minutes or less	0
1 hour	1 hour
1 hour and any segment of the next hour	1 hour

A. Medical appointments of 90 minutes or less, with written physician verification, shall not be charged to an employee's sick leave account

B. Medical appointments of 90 minutes or less, without written physician verification, shall be charged to employee's sick leave account in 15-minute segments.

C. If an employee becomes sick on scheduled vacation time, the department manager may, with acceptable documentation, authorize the use of sick leave instead of vacation leave.

16.3 Employees hired after 1 November 1984 shall be able to accumulate an unlimited number of sick leave hours. A maximum of six hundred (600) hours will be the total amount for which the City will reimburse the employee upon termination or resignation from employment. This provision does not apply to employees with less than five (5) years of continuous service, who **shall not** be entitled to any compensation under this section.

For employees with more than five (5) years of service:

A. Resignation from employment after five (5) years will result in reimbursement at 25% of 600 hours maximum, times the actual hourly rate at the time of resignation.

B. Retirement from CITY employment after five (5) years and with proof of submission of application for retirement from CalPERS will result in reimbursement at the rate of 50% of 600 hours maximum, times the actual hourly rate at the time of retirement.

Employees with less than five (5) years of service shall not be entitled to cash out any sick leave upon separation from service.

16.4 An employee shall be permitted to use up to 48 hours of sick leave per year for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or employee's family member. Any use of sick leave for this purpose beyond 48 hours per year shall be permitted with the approval of the Department Manager.

16.4.1 Employees who are victims of domestic violence, sexual assault or stalking shall be permitted to use up to 48 hours of sick leave per year to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child; or to seek medical attention for injuries caused by the domestic violence, sexual assault, or stalking; to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; to obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; and to participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation. Any use of sick leave for this purpose beyond 48 hours per year shall be permitted with the approval of the Department Manager.

16.4.2 For purposes of this policy, "family member" shall include any of the following: a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis, regardless of the child's age or dependency status; a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; a spouse; a State of California registered domestic partner; a grandparent; a grandchild; and a sibling.

16.5 Pursuant to Government Code Section 20965 to the City's CalPERS retirement contract, an employee may elect to use sick time available to him/her under the provision of the contract for sick leave service credit. If an employee elects to use sick leave available for service credit, such time cannot also be applied to the "sell back" provision under this section.

ARTICLE 17: CATASTROPHIC ILLNESS/SICK LEAVE HOURS TRANSFER

17.1 When an employee or a member of the employee's immediate family has suffered a catastrophic illness or major injury such employee may request to take a paid leave of absence utilizing sick leave donated by other employees, subject to the approval of the City Administrator in his/her sole discretion. The City Administrator's authorization makes no guarantee that paid leave will be donated by other employees.

To be eligible, an employee must have exhausted all of this/her sick, vacation, compensatory and executive leave. If approved, leave shall be transferred on an hour-for-hour basis. Donated hours shall not be counted for purposes of accrual of other paid leave or seniority, unless required by law.

Employees may donate accrued sick leave so long as they provide written consent to the City confirming they are voluntarily donating such leave, and maintain a minimum balance of 80 hours after the transfer.

ARTICLE 18: OVERTIME COMPENSATION AND/OR COMPENSATORY TIME

18.1 The City shall comply with the regulations established by the Fair Labor Standards Act (FLSA).

18.2 Overtime shall be compensated at time and one-half for all work performed over the normal forty (40) hour work period for those employees entitled to overtime pursuant to the guidelines and regulations established by the FLSA. Paid time off shall be counted as time worked.

18.3 Employees entitled to overtime compensation may, in-lieu of monetary compensation for statutory overtime, choose to take compensatory time off at a rate of not less than one and one-half hours for each hour of overtime worked. Compensatory time shall only be granted upon approval of the Department Manager.

18.4 Accrued compensatory time must be permitted to be used within a reasonable period" of time as long as it does not "unduly disrupt" the operations of the agency. (Per FLSA guidelines).

18.5 Compensatory time may be accrued up to the following limits with Department Manager approval as follows:

- 75 hours (equals 50 straight-time hours)

18.6 In the event compensatory time is sold back to the City, it will be paid at the straight hourly rate since it was accumulated at the time and one-half rate.

ARTICLE 19: CALL-BACK/STAND-BY PAY

In situations where an employee is called back to work during a non-scheduled period of time the employee shall be granted a minimum of three (3) hours overtime. Travel time to and from the workplace shall not be considered time worked.

A. Standby is any time other than time when the employee is actually on duty during which an employee is not required to be on City premises but to stand by ready to immediately report for duty and must arrange communication such that the supervisor can reach the employee within fifteen (15) minutes or less.

If an employee is placed on standby duty, such employee shall be compensated for the time spent on assigned standby at \$40 per weekday, and \$80 per weekend day or holiday. No employee shall be compensated for standby duty and call back work simultaneously.

The City may assign employees who will be required to perform stand-by duty with fourteen (14) days' notice, except in the event of a pending/forecasted storm or in other emergency situations.

ARTICLE 20: LONGEVITY PAY

20.1 Effective the first full pay period following City Council ratification, employees with at least ten (10) years of continuous service with the City of Carmel-by-the-Sea as a regular, full-time employee shall receive a 5% Longevity pay premium.

ARTICLE 21: INSURANCE PROGRAMS

21.1 The City offers a variety of insurance protection programs for the employee and dependents. Some protection is provided through fully insured instruments. Other protection is provided through a City self-funded program. Other protection is employee funded.

21.2 For the purposes of this section the following definitions and groupings of coverage shall exist:

A. **Non-Elective (Core):** Mandatory coverage: (Employer Paid)

(1) Mandatory per month employer contribution required by CalPERS for each employee enrolled in the CalPERS medical protection program.

(2) Employee/dependent dental premium, established by the City's provider of record, depending on the level of coverage chosen.

(3) Collective employee/dependent vision premium established by City's provider of record..

(4) Basic \$30,000 life insurance premium (available only to full-time and regular part time employees).

(5) Accidental Death and Dismemberment Policy (available only to full-time and regular part time employees).

B. **Elective (non-core) coverage (Employee Paid)**: available for purchase with flexible spending monies available to eligible employee:

(1) Employee and/or dependent medical coverage in the CalPERS Program less the mandatory per month required employer payment.

(2) I.R.C. Section 125 - Flexible Spending Account

(3) I.R.C. Section 125 - Dependent Care

C. Section 125 Plan: The City's insurance plan is structured within this tax-deferred program. This is an Internal Revenue Code permitted plan. A third party administrator provides administration of the plan.

21.3 For eligible employees enrolled in the Public Employee Medical and Hospital Care Act (PENHCA) Medical Plan, the City will make a maximum medical premium contribution, based on employee choice, that is either equal to 100% of the cost of the premiums for the lowest cost PPO or HMO plan offered or 80% of the cost of premiums for any other offered health plan, whichever provides the lowest cost to the employee.

The Parties agree to an automatic re-opener of this provision if the cost to the City of paying 100% of the premiums for the lowest cost PPO or HMO plan offered is projected to increase by more than 20% compared to the cost in the prior year.

21.4 The City agrees to maintain the contract for Group Long Term Disability Insurance (LTD). The cost of this insurance shall continue to be fully paid by participating employee and Participation in the plan is voluntary. Continuation of the coverage requires seventy-five percent (75%) participation by all eligible employees (benefited full-time and part-time).

21.5 Plan Contents:

A. Life Insurance and Accidental Death/Dismemberment Insurance (AD&D) (Only available to full-time and benefited part-time employees).

Provider: Life Insurance - Standard Insurance Company

Rates: \$.32 per \$1000 Benefit (Basic Life)

\$.04 per \$1000 of Benefit (Basic AD&D)

Provider: AD&D Insurance - Standard Insurance Company

Rates:

All employees: \$ 1.50 p/month

B. Vision Insurance:

Vision insurance is available through Vision Service Plan (VSP).

Employees shall be enrolled in the City's vision care health plan. The

City shall pay 100% of the premium for the VSP Core (City Paid) plan for employee and eligible dependents. Employees have one option to purchase a buy-up option that is fully paid by the employee.

C. Dental Insurance:

Dental insurance is available through Delta Dental. The City will pay 100% of the premium for the Delta Dental Core (City Paid) plan for employee and eligible dependents. Employees have two options to purchase a buy-up option that is fully paid by the employee.

D. Medical Insurance: CalPERS Plan (PEMHCA): subject to terms and conditions of the Public Employees' Medical and Hospital Care Act (PEMHCA).

21.6 Retirees and Other Qualified Employees:

A. The City agrees to fund the minimum mandatory per month for medical coverage plus the administrative cost (based on total monthly premium) for currently enrolled retirees and eligible and enrolled un-benefited hourly employees, as required by CalPERS.

(1) The City agrees to provide additional minimum funding as needed for existing retirees, active or hourly employees who currently are not participating in the medical program, but who would be eligible under CalPERS guidelines.

21.7 Opting Out (Medical Program Only): Eligible employees may elect not to participate in the CalPERS medical plan. Anyone opting out shall only be eligible to take cash in the amount of \$291 per month, providing they meet the following conditions:

A. They shall submit proof of legally compliant medical coverage elsewhere.

B. They shall sign a medical plan waiver.

C. Married employees shall be required to obtain the signature of their spouse on the medical plan waiver form.

D. Employees under legal order to provide medical coverage for any dependents shall only be permitted to opt out after showing proof of coverage for each dependent identified in such legal order.

21.8 The City and Association will review the dental and vision plans to identify the most affordable and viable plan without increasing the plan(s) premium.

ARTICLE 22: WORKERS' COMPENSATION: SALARY CONTINUATION NON-SAFETY EMPLOYEES

22.1 Whenever any full-time, miscellaneous (Non-Safety) employee as defined by the Public Employees' Retirement System (PERS), is disabled, whether temporarily or permanently,

by injury or illness arising out of and in the course of his/her duties, he/she shall become entitled, regardless of his/her period of service with the City, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments, for the period of the disability, but not exceeding six months, or until such earlier date as he/she returns to duty or is retired on permanent disability pension in accordance with the rules/regulations governing such retirement.

22.2 If the period of disability extends beyond the six month period, full salary continuation shall be discontinued and the employee shall be entitled to legal allowances provided under Workers' Compensation Laws of the State of California which may be integrated with any other compensation to which the employee may be entitled, i.e., Long Term Disability coverage.

22.3 Benefits: During the six month or less period of disability, the employee who suffers such injury/illness arising out of and in the course of his/her duties shall continue entitlement to all benefits as would have been afforded that employee had he/she not have suffered such injury/illness.

ARTICLE 23: OTHER BENEFITS

23.1 Jury Duty:

A. The City provides time off with no loss of salary for employees who must fulfill jury duty obligations. Employees shall be entitled to keep the mileage reimbursement for such service. Any per diem amount received by the employee shall be signed over to the City.

23.2 Employee Payroll Deductions:

A. Upon authorization from any employee the City shall make direct deposit(s) to the financial institution of the employee's choice, through the City's duly authorized financial institution. The employee's financial institution must have direct deposit capabilities.

B. Employee funded insurance programs and deductions for deferred compensation programs shall be paid through payroll withholding.

C. Employee deductions for Union dues or service fees shall be made in accordance with the Agency Shop provisions in Section 23, below.

23.3 Wellness Reimbursement:

The City will provide any employee in the unit with a reimbursement of up to \$50/month to defray costs of a membership to a licensed gym/health club/fitness facility of the employee's choosing. This reimbursement will be provided on a semi-annual basis in arrears (July and January).

In order for employees to be reimbursed, they must provide evidence of payment for such membership in the form of cancelled checks, a credit card statement, or other payment verification deemed acceptable by the Finance Manager which provides verification of the membership payment over a six-month period.

Requests for reimbursements must be received by the City no later than the end of the month following the reimbursement period (e.g., requests for reimbursements for the period July –December must be received by the City on or before January 3 Pt; requests for reimbursements for the period January — June must be received by the City on or before July 3 Pt) in order to receive payment.

23.4 Layoff Policy: Per Resolution 92-90, the policies and procedures for the layoff of City employees are incorporated herein to the MOU.

ARTICLE 24: UNION SECURITY/ACCESS

24.1 Employee Payroll Deductions:

A. The Union shall have the exclusive right to payroll deduction for its members in this unit including regular dues and employee benefit program costs. Regular dues and employee benefit program costs may be deducted from the employee's individual paycheck. Except as otherwise provided in this Memorandum, payroll deductions shall be made only upon the revocable written authorization of the individual employee.

B. A continuation of Union payroll deductions, without resigning a payroll deduction card, shall be allowed after an employee returns from a leave of absence.

24.2 Maintenance of Membership/Maintenance of Membership/Separation from Unit:

A. Employees who are dues paying Union members at the time of the signing of this agreement or who become dues paying members during the term of the agreement shall remain dues paying members for the duration of the agreement. Employees may opt out of Union membership by providing written notice to the Union during the thirty (30) day period prior to the expiration of this agreement.

B. The provisions of this Agreement shall not apply during periods that an employee is separated from the representation unit but shall be reinstated upon the return of the employee to the representation unit. The term "separation" includes transfer out of the unit, layoff, and leave of absence with duration of more than thirty (30) days.

24.3 Change In Dues:

A. Any change in dues will be submitted to the City, in writing, thirty (30) days prior to the effective date of such change.

24.4 Forfeiture of Deductions:

A. If the balance of an employee's wages, after all other involuntary payments, union dues, and insurance premium deductions are made in any one pay period, is not sufficient to pay deductions required by this Agreement, no such deduction shall be made for that period.

24.5 Hold Harmless:

A. The authorization for payroll deductions described in this agreement shall specifically require the employee to agree to hold the City harmless from all claims, demands, suits or other forms of liability that may arise against the City for or on account of any deduction made from the wages of such employee.

B. The Union shall defend, indemnify and save the City harmless against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of or by reason of action taken or not taken by the City under this Agreement. This includes not only the City's reasonable attorney fees and costs but the reasonable cost of management preparation time as well. The City shall notify the Union of such costs on a case-by-case basis.

24.6 New Employee Orientation:

A. New employee orientation shall occur within seven (7) days of an employee's hire. The Union will be provided not less than ten (10) calendar days' advanced notice of the time, date and location of the orientation. The Union will be given up to thirty (30) minutes during the orientation to present Union membership information. Attendance of the new employee at the Union's portion of the orientation is mandatory. Management representatives will excuse themselves during the Union portion of the orientation. Employee representatives conducting the orientation shall be granted paid release time to attend including reasonable travel time if needed.

B. The City will provide the Union a digital file via e-mail to the Association President and Labor Relations Representative containing the following information:

- Name
- Job title
- Department
- Work location
- Work, home, and personal cellular telephone numbers
- Home address

The City shall not be required to supply employee information it does not have.

ARTICLE 25: IMPASSE RESOLUTION

25.1 The parties agree to utilize the Meyers-Milias-Brown Act (MMBA) impasse resolution process and include the City's mediation component, as outlined in this section.

25.2 Impasse Defined:

A. "Impasse" means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning

which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

25.3 Mediation:

A. The parties agree that prior to initiating the State's impasse procedure, the dispute shall be submitted to a mediator from the California State Mediation and Conciliation Service. Costs for mediation services, if any, shall be borne equally by the City and the Employee Union.

B. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

ARTICLE 26: GRIEVANCE ARBITRATION

26.1 Process:

A. Within ten (10) working days of the receipt of the City Administrator's final decision, the Union may request arbitration by filing a written request. The request for arbitration shall be in writing to the Department Head with a copy sent to the Human Resources Manager.

B. If either the City or the Union so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of a grievance first. No hearing on the merits of the grievance shall be conducted until the issue of arbitrability has been decided.

C. The parties shall request a list of seven (7) arbitrators, within ten (10) working days after receipt of the employee's request for arbitration, from the California State Mediation and Conciliation Service.

D. The City and the Union shall share the fees and expenses of the arbitrator and the certified court reporter equally. The services of the certified court reporter are optional. Both parties must agree if a certified court reporter is to be employed and that the cost shall be equally shared. Financial responsibility shall be established before the selection of an arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other. However, if either party declines the use of a court reporter, the party requesting the court reporter shall pay the entire cost of employing the court reporter.

E. The arbitrator's review is limited to the interpretation of this Memorandum of Understanding and/or the City's Personnel Rules and Regulations.

26.2 Decision:

A. The decision of the arbitrator shall be made in writing within thirty (30) working days of the close of the hearing or the submission of written briefs.

B. The decision of the arbitrator shall be advisory only.

C. City Administrator reserves the right to accept, reject, or modify the recommendation of the arbitrator. The decision of the City Administrator regarding resolution of the grievance shall be final and binding upon both parties.

ARTICLE 27: MANAGEMENT RIGHTS

27.1 It is understood and agreed that the City retains all of its powers and authority to manage municipal services and the work force performing those services.

27.2 It is agreed that during the term of this contract the City shall not be required to meet and confer on matters, which are solely a function of management, including the right to:

A. Determine and modify the organization of City government and its constituent work units.

B. Determine the nature, standards, levels, and mode of delivery of services to be offered to the public.

C. Determine the methods, means, and the numbers and kinds of personnel by which services are to be provided.

D. Determine whether goods or services shall be made or provided by the City, or shall be purchased, or contracted for.

E. Establish employee performance standards and to require compliance therewith.

F. Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline employees, subject to the requirements of applicable law including the current Personnel Ordinance.

G. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons.

H. Implement rules, regulations, and directives consistent with all applicable laws and the specific provisions of the Memorandum of Understanding.

I. Take all necessary actions to protect the public and carry out its mission in emergencies.

27.3 Decisions under this section shall not be subject to the grievance procedure unless specifically authorized by the Personnel Ordinance or other applicable law.

27.4 The City will meet and confer on the exercise of the foregoing Management Rights where such exercise falls within the scope of representation as defined by the MMBA.

27.5 Without waiving any of its management rights, the City agrees to participate in a standing Joint Labor Management Committee ("JLMC") that will be made up of representatives

of the Association and the City. This standing JLMC shall meet at least quarterly, upon request by either party, and may meet more frequently, if both parties agree. The City also agrees to participate in additional JLMC meetings to discuss specific topics including, but not limited to the following anticipated topics:

- A. Working conditions: the manner by which bargaining unit positions are filled (possible internal promotion/transfer preference), how work is performed (current employee vs. contract worker) and how it is assigned, workspace enhancements, training/professional development (scope, career ladders), remote work/telework possibilities, out-of-class issues.

The meeting schedule will be set in advance and the dates agreed to by both sides. Prior to any JLMC meeting, the parties will agree on an advanced agenda that identifies participants, topics to be covered, whether they involve management rights or negotiable decisions, and/or negotiable effects, as well as the parties' intended outcome (e.g. consideration of employee input into management decision, new/revised policy, side letter/letter of agreement)

ARTICLE 28: HARASSMENT POLICY

28.1 The City agrees to meet and consult with the Union before any changes to the City's harassment policy are presented to the City Council.

ARTICLE 29: SEPARABILITY

29.1 If a court of competent jurisdiction finally determines that any provision of the Memorandum of Understanding is invalid and unenforceable, such provision shall be separable, and the remaining provisions of the Memorandum of Understanding shall remain in full force and effect.

ARTICLE 30: EFFECT OF AGREEMENT

30.1 This Memorandum of Understanding sets forth the full and complete understanding between the parties hereto. Any items, from previous agreements, not addressed in this agreement are carried forward.

ARTICLE 31: SIGNATURES

31.1 For the City of Carmel-by-the-Sea:

Chip Rerig, City Administrator

Dated

31.2 For the Carmel-by-the-Sea General Employees Association:

Ryan Heron, Chief Negotiator
Union of Public Employees of California—
Local 792

Dated

Dated

Dated

Dated

Appendix “A”

Uniform Items: Costs and Reimbursements*

The City will provide Uniforms/Equipment for employees as follows:

Job Classification	Items Provided
• Assistant City Forester	Pants
• Facilities Maintenance Specialist	Shirt
	Jacket
• Forest Care Worker	Respirator
• Maintenance Worker I/II	Chaps
• Maintenance Worker III	Helmets with Screens*
• Streets Supervisor	
• Tree Climber and Care Specialist	

The City agrees to make available/furnish protective equipment to all classes listed above in addition to the classes of Community Activities Assistant, Code Compliance Coordinator, and Building Inspector if requested and/or deemed necessary which includes, but may not be limited to:

- Hat (baseball cap or visor)
- Hard Hat
- Rain Gear
- Safety Vest
- Eye and/or Ear Protection
- Gloves

The City agrees to reimburse the classes listed below up to \$350 each fiscal year for the purchase and repair of safety related footwear which must be worn at all times while on duty. Each department head will determine the specifics of the footwear required.

- Assistant City Forester
- Facilities Maintenance Specialist
- Forest Care Worker
- Maintenance Worker I/II
- Maintenance Worker III
- Streets Supervisor
- Tree Climber and Care Specialist

The City agrees to reimburse the classes listed below up to \$350 every other fiscal year (odd numbered years) for the purchase and repair of safety related footwear which must be worn at all times while in the field. Each department head will determine the specifics of the footwear required:

- Assistant Planner
- Community Activities Assistant
- Code Compliance Coordinator
- Building Inspector

*Forestry Staff only



City of Carmel by the Sea

SALARY SCHEDULE

Effective July 1, 2024

GENERAL EMPLOYEES UNIT (affiliated unit of LiUNA)

City Council Meeting: August 6, 2024 /Reso #2024-xxx

4% effective July 1, 2024							
Classification	Grade	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
Administrative Coordinator	G-229	Hourly:	\$31.84	\$33.44	\$35.11	\$36.87	\$38.71
		Monthly:	\$5,518.93	\$5,796.27	\$6,085.73	\$6,390.80	\$6,709.73
		Annual:	\$66,227.20	\$69,555.20	\$73,028.80	\$76,689.60	\$80,516.80
Assistant City Forester	G-296	Hourly:	\$44.49	\$46.72	\$49.06	\$51.51	\$54.09
		Monthly:	\$7,711.60	\$8,098.13	\$8,503.73	\$8,928.40	\$9,375.60
		Annual:	\$92,539.20	\$97,177.60	\$102,044.80	\$107,140.80	\$112,507.20
Assistant Planner	G-264	Hourly:	\$37.93	\$39.82	\$41.81	\$43.90	\$46.09
		Monthly:	\$6,574.53	\$6,902.13	\$7,247.07	\$7,609.33	\$7,988.93
		Annual:	\$78,894.40	\$82,825.60	\$86,964.80	\$91,312.00	\$95,867.20
Building Inspector	G-314	Hourly:	\$48.66	\$51.10	\$53.65	\$56.34	\$59.16
		Monthly:	\$8,434.40	\$8,857.33	\$9,299.33	\$9,765.60	\$10,254.40
		Annual:	\$101,212.80	\$106,288.00	\$111,592.00	\$117,187.20	\$123,052.80
Building Maintenance Specialist (Facilities)	G-253	Hourly:	\$35.76	\$37.54	\$39.43	\$41.40	\$43.47
		Monthly:	\$6,198.40	\$6,506.93	\$6,834.53	\$7,176.00	\$7,534.80
		Annual:	\$74,380.80	\$78,083.20	\$82,014.40	\$86,112.00	\$90,417.60
Circulation Supervisor	G-244	Hourly:	\$34.33	\$36.05	\$37.85	\$39.74	\$41.72
		Monthly:	\$5,950.53	\$6,248.67	\$6,560.67	\$6,888.27	\$7,231.47
		Annual:	\$71,406.40	\$74,984.00	\$78,728.00	\$82,659.20	\$86,777.60
Code Compliance Coordinator	G-284	Hourly:	\$41.90	\$43.99	\$46.20	\$48.51	\$50.93
		Monthly:	\$7,262.67	\$7,624.93	\$8,008.00	\$8,408.40	\$8,827.87
		Annual:	\$87,152.00	\$91,499.20	\$96,096.00	\$100,900.80	\$105,934.40
Community Activities Assistant**	G-272	Hourly:	\$39.48	\$41.45	\$43.52	\$45.70	\$47.99
		Monthly:	\$6,843.20	\$7,184.67	\$7,543.47	\$7,921.33	\$8,318.27
		Annual:	\$82,118.40	\$86,216.00	\$90,521.60	\$95,056.00	\$99,819.20
Community Activities Assistant I	G-242	Hourly:	\$34.00	\$35.69	\$37.48	\$39.35	\$41.32
		Monthly:	\$5,893.33	\$6,186.27	\$6,496.53	\$6,820.67	\$7,162.13
		Annual:	\$70,720.00	\$74,235.20	\$77,958.40	\$81,848.00	\$85,945.60
Community Activities Assistant II	G-272	Hourly:	\$39.48	\$41.45	\$43.52	\$45.70	\$47.99
		Monthly:	\$6,843.20	\$7,184.67	\$7,543.47	\$7,921.33	\$8,318.27
		Annual:	\$82,118.40	\$86,216.00	\$90,521.60	\$95,056.00	\$99,819.20
Finance Analyst	G-294	Hourly:	\$42.96	\$45.12	\$47.37	\$49.74	\$52.23
		Monthly:	\$7,446.40	\$7,820.80	\$8,210.80	\$8,621.60	\$9,053.20
		Annual:	\$89,356.80	\$93,849.60	\$98,529.60	\$103,459.20	\$108,638.40

Classification	Grade	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
Finance Specialist	G-239	Hourly:	\$33.49	\$35.16	\$36.92	\$38.77	\$40.71
		Monthly:	\$5,804.93	\$6,094.40	\$6,399.47	\$6,720.13	\$7,056.40
		Annual:	\$69,659.20	\$73,132.80	\$76,793.60	\$80,641.60	\$84,676.80
Information Technology Technician	G-262	Hourly:	\$36.50	\$38.33	\$40.25	\$42.27	\$44.38
		Monthly:	\$6,326.67	\$6,643.87	\$6,976.67	\$7,326.80	\$7,692.53
		Annual:	\$75,920.00	\$79,726.40	\$83,720.00	\$87,921.60	\$92,310.40
Library Assistant	G-204	Hourly:	\$28.13	\$29.54	\$31.01	\$32.56	\$34.20
		Monthly:	\$4,875.87	\$5,120.27	\$5,375.07	\$5,643.73	\$5,928.00
		Annual:	\$58,510.40	\$61,443.20	\$64,500.80	\$67,724.80	\$71,136.00
Librarian I	G-234	Hourly:	\$32.66	\$34.29	\$36.00	\$37.80	\$39.70
		Monthly:	\$5,661.07	\$5,943.60	\$6,240.00	\$6,552.00	\$6,881.33
		Annual:	\$67,932.80	\$71,323.20	\$74,880.00	\$78,624.00	\$82,576.00
Librarian II	G-254	Hourly:	\$36.09	\$37.90	\$39.79	\$41.78	\$43.87
		Monthly:	\$6,255.60	\$6,569.33	\$6,896.93	\$7,241.87	\$7,604.13
		Annual:	\$75,067.20	\$78,832.00	\$82,763.20	\$86,902.40	\$91,249.60
Permit Technician	G-239	Hourly:	\$33.49	\$35.16	\$36.92	\$38.77	\$40.71
		Monthly:	\$5,804.93	\$6,094.40	\$6,399.47	\$6,720.13	\$7,056.40
		Annual:	\$69,659.20	\$73,132.80	\$76,793.60	\$80,641.60	\$84,676.80
Planning Technician	G-248	Hourly:	\$35.01	\$36.75	\$38.59	\$40.53	\$42.56
		Monthly:	\$6,068.40	\$6,370.00	\$6,688.93	\$7,025.20	\$7,377.07
		Annual:	\$72,820.80	\$76,440.00	\$80,267.20	\$84,302.40	\$88,524.80
Program Supervisor (Recreation)	G-252	Hourly:	\$35.72	\$37.51	\$39.38	\$41.35	\$43.42
		Monthly:	\$6,191.47	\$6,501.73	\$6,825.87	\$7,167.33	\$7,526.13
		Annual:	\$74,297.60	\$78,020.80	\$81,910.40	\$86,008.00	\$90,313.60
Maintenance Worker I	G-214	Hourly:	\$29.56	\$31.03	\$32.58	\$34.22	\$35.93
		Monthly:	\$5,123.73	\$5,378.53	\$5,647.20	\$5,931.47	\$6,227.87
		Annual:	\$61,484.80	\$64,542.40	\$67,766.40	\$71,177.60	\$74,734.40
Maintenance Worker II	G-224	Hourly:	\$32.51	\$34.13	\$35.84	\$37.63	\$39.51
		Monthly:	\$5,635.07	\$5,915.87	\$6,212.27	\$6,522.53	\$6,848.40
		Annual:	\$67,620.80	\$70,990.40	\$74,547.20	\$78,270.40	\$82,180.80
Maintenance Worker III	G-253	Hourly:	\$35.76	\$37.54	\$39.43	\$41.40	\$43.47
		Monthly:	\$6,198.40	\$6,506.93	\$6,834.53	\$7,176.00	\$7,534.80
		Annual:	\$74,380.80	\$78,083.20	\$82,014.40	\$86,112.00	\$90,417.60
Streets Supervisor	G-288	Hourly:	\$42.74	\$44.89	\$47.13	\$49.49	\$51.97
		Monthly:	\$7,408.27	\$7,780.93	\$8,169.20	\$8,578.27	\$9,008.13
		Annual:	\$88,899.20	\$93,371.20	\$98,030.40	\$102,939.20	\$108,097.60
Tree Climber & Care Specialist	G-253	Hourly:	\$35.76	\$37.54	\$39.43	\$41.40	\$43.47
		Monthly:	\$6,198.40	\$6,506.93	\$6,834.53	\$7,176.00	\$7,534.80
		Annual:	\$74,380.80	\$78,083.20	\$82,014.40	\$86,112.00	\$90,417.60



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

August 6, 2024
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Brandon Swanson, Assistant City Administrator

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2024-068 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU

RECOMMENDATION:

Adopt Resolution 2024-068 adopting a Memorandum of Understanding (MOU) between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit) for the period of July 1, 2024 through June 30, 2026 and authorizing the City Administrator to execute the MOU.

BACKGROUND/SUMMARY:

The MOU between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit) expired on June 30, 2024, the terms of which are still in effect unless and until a successor MOU is adopted. At the direction of the City Council, City management and staff have been meeting and conferring with LIUNA/UPEC, Local 792 (Management Unit) for several meetings in accordance with the Meyers-Milias-Brown Act, Government Code section 3500 *et seq.* ("MMBA").

The parties have reached a tentative agreement on terms for a successor MOU. Through a member vote, LIUNA/UPEC, Local 79 (Management Unit) has unanimously approved the terms of the tentative agreement pursuant to its bylaws and the MMBA. Notable provisions of the tentative agreement include:

Term:	two years (July 1, 2024 through June 30, 2026)
Compensation:	4% base wage increase July 1, 2024, 4% base wage increase July 1, 2026
	5% Longevity Pay premium for employees with 10 continuous years of service with City
	\$100 maximum monthly Advanced Certification/License Pay for certifications/licenses that provide longterm cost savings to City

Health Benefit:	City coverage of 100% premium for lowest-cost PPO or HMO plan offered
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This recommendation aligns with the City's goals of compensating its management employees at a competitive and fair level in light of the relevant labor market, while encouraging employees to maintain long-term employment with the City so as to provide knowledgeable and first-class municipal services to the City's residents and visitors.

Accordingly, staff recommends that the City Council approve a Resolution (**Attachment 1**) adopting a successor memorandum of understanding with LIUNA/UPEC, Local 79 (Management Unit) for the period of July 1, 2024 through June 30, 2026, authorize the City Administrator to execute said successor memorandum of understanding on behalf of the City (**Attachment 2**), and adopt an updated salary plan for the relevant classifications in accordance with Municipal Code section 2.52.520 (**Attachment 3**).

FISCAL IMPACT:

The Management (LIUNA) Unit's annual payroll is \$874,446. Year 1 salary increase (4%) is \$34,977. Year 2 salary increase (4%) is \$36,376. The recently approved FY 24/25 Budget includes sufficient appropriations for the revised salary schedule. The fiscal impact does not reflect the increases to the CalPERS pension liability (UAL).

PRIOR CITY COUNCIL ACTION:

There has been no open-session review by the City Council for this item.

ATTACHMENTS:

- Attachment 1) Resolution 2024-068
- Attachment 2) Exhibit A - Management MOU
- Attachment 3) Exhibit B - Management Salary Schedule

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

RESOLUTION NO. 2024-068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY AND LIUNA/UPEC, LOCAL 792 (MANAGEMENT UNIT) AND ADOPTING THE CLASSIFICATIONS SALARY PLAN IN ACCORDANCE WITH MUNICIPAL CODE 2.52.520 AS OF JULY 1, 2024

WHEREAS, the current Memorandum of Understanding (MOU) between the City and employees represented by the LIUNA/UPEC, Local 792 (Management Unit) expired on June 30, 2024; and

WHEREAS, the City has been in negotiations with LIUNA/UPEC, Local 792 (Management Unit) regarding salaries and other terms and conditions of employment; and

WHEREAS, the City and the LIUNA/UPEC, Local 792 (Management Unit) have reached a tentative agreement which is embodied in the attached Memorandum of Understanding for the period of July 1, 2024 through June 30, 2026, and

WHEREAS, Municipal Code 2.52.520 and amendments thereto provide, among other things that the City Council establish the legally current salary range from the salary schedule for each class of position; and

WHEREAS, the salary resolution is adopted annually or periodically by the City Council upon review and recommendation of the City Administrator; and

WHEREAS, the California Public Employee's Retirement Law, at Section 570.5 of the California Code of Regulations Title 2, requires the City to publish pay rates and ranges on the City's internet site and the City Council to approve the pay rates and range in its entirety each time a modification is made.

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

1. Authorize the City Administrator to execute the Memorandum of Understanding between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit) (Exhibit A);
2. Authorize and approve the City Administrator to establish the pay rates/schedule for LIUNA/UPEC, Local 792 (Management Unit) (Exhibit B).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk

RESOLUTION 2024-045

EXHIBITS

Exhibit A - Memorandum of Understanding between the City of Carmel-by-the-Sea and LIUNA/UPEC, Local 792 (Management Unit)

Exhibit B - Pay rates/schedule for LIUNA/UPEC, Local 792 (Management Unit)

MEMORANDUM OF UNDERSTANDING

Between the

City of Carmel-by-the-Sea

And the

**Carmel-by-the-Sea Management Employees Unit, an
Affiliated Unit of LIUNA / UPEC Local 792**

For the period

July 1, 2024 through June 30, 2026

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**Memorandum of Understanding
between
The City of Carmel-by-the-Sea
and
City of Carmel-by-the-Sea Management Employees Unit, an Affiliated
Unit of
LIUNA/UPEC Local 792**

ARTICLE 1: PREAMBLE

This Memorandum of Understanding (MOU) is made and entered into between the City of Carmel-by-the-Sea, hereinafter referred to as "CITY," and the City of Carmel-by-the-Sea Management Employees Union, an Affiliated Unit of Laborers' International Union of North America, United Public Employees of California, LIUNA/UPEC, Local 792, hereinafter referred to as "UNION," pursuant to California Government Code Section 3500 et seq. The purpose of this MOU is the establishment of rates of compensation hours of work and other terms and conditions of employment. Existing practices and/or benefits which are not referenced in this MOU and which are subject to the meet and confer process shall continue without change unless modified subject to the meet and confer process.

ARTICLE 2: RECOGNITION

2.1 The City of Carmel-by-the-Sea recognizes the UNION as the exclusive representative for employees in the following classifications:

Accountant
City Forester
Associate Planner
Principal Planner
Senior Planner
Public Works Superintendent
Building (Facility) Maintenance Supervisor

ARTICLE 3: TERM OF CONTRACT

3.1 The term of this MOU shall be from July 1, 2024 through June 30, 2026.

ARTICLE 4: COMPENSATION

4.1 Wages:

Effective July 1, 2024, the hourly rate salary steps for all classes in this bargaining unit shall be increased by four percent (4%). Effective July 1, 2025, the hourly rate salary steps for all classes in this bargaining unit shall be increased by four percent (4.0%).

For Associate Planner classification only, effective upon City Council ratification, the hourly rate salary step shall be increased by ten percent (10%).

4.2 Out of Class Pay:

The purpose of this provision is to provide for compensation of an employee who is properly assigned in writing to perform the significant duties of a higher classified position for relief necessitated by the temporary vacancy caused by the incumbent's absence or pending the filling of a vacant position beginning on the second full pay period of such assignment and continuing for the duration of such assignment, but not to exceed six months (pursuant to CalPERS regulations).

Out of class pay will be provided when the following conditions are met:

1. There is a vacant position specifically allocated to the department.
2. The assignment will require the duties of the position to be performed by the individual for a period of not less than two (2) pay periods.
3. The class to which the employee is assigned must have a top salary step of at least 5% above the top step of the employee's current class.
4. The assignment and the duration of the assignment is made by the Department Head in writing specifying the period of the temporary assignment and is approved by the City Administrator.
5. The employee must satisfactorily perform the essential functions of the job class to which that employee is assigned.
6. The employee meets the minimum qualifications identified in the job description of the classification being assigned.

Such temporary assignment shall not be considered a promotion. The individual shall receive either a five percent (5%) premium or Step 1 of the class assigned, whichever is greater.

If the employee receives between five percent (5%) and seven-and one-half percent (7.5%) out of class pay, the employee will continue to be eligible to earn overtime as would have been earned in the employee's regular class. If the employee receives out of class pay greater than seven-and one-half percent (7.5%), and is assigned to an FLSA exempt position, the employee will not be eligible for overtime pay, but will receive pro-rated management leave based on the duration of the assignment.

The out of class pay shall cease when any of the following occur:

1. The absent incumbent returns to duty.
2. The vacant position is filled.
3. The assignment is terminated in writing by the appointing authority, whichever occurs first.

Under no circumstance may any out of class assignment continue longer than six months in any one fiscal year.

4.3 Advanced Certification/License Pay

As recommended by a Department Head and subject to approval by the City Administrator in his/her sole discretion, the City shall provide fifty dollars \$50 per month to employees for each certification that provide added benefit to the City in the form of identified long-term cost savings to the City through reduced reliance on third-party consultants or contractors. Certifications or licenses eligible for this benefit are those that are beyond the certification or licenses required for the position. Each employee shall be eligible for a maximum certification pay of \$100, or two certifications or licenses. The Parties agree that topics of eligible types of certifications or licenses, as well as considerations such as caps on numbers of employees authorized to receive a type of pay will all be included in the Joint Labor Management Committee meetings intended to take place during the term of this Agreement, pursuant to Section 26.5 of this Agreement.

ARTICLE 5: EDUCATIONAL INCENTIVE PROGRAM

5.1 Educational Incentive Program (EIP) for Mid-Management, Professional and Supervisory:

The City Council, having determined the acquisition of additional education by employees makes those employees more valuable to the City, does hereby establish an Educational Incentive Pay Program (EIP). The EIP will apply to educational credits acquired after the employee's date of hire by the City of Carmel-by-the-Sea.

5.2 Definitions: For the purpose of this program, the following definitions shall apply:

A. Base Salary shall mean the monthly salary of the employee as established by the City Council and shall not include any overtime, holiday-in-lieu pay, allowances, or other supplemental benefits.

B. Satisfactory Completion shall mean a grade of "C" or better in any course. No more than one-third (1/3) of the total number of units considered for EIP may be on a "credit only" or "pass/fail" basis (limit of 10 out of 30 units or 20 out of 60 units). Units earned with a "Credit Minus" grade will not be considered eligible under the EIP program.

C. College Level shall mean any post-high school educational institution accredited by the California State Department of Education, the Western Association of Schools and Colleges, or by equivalent organizations in other states and countries, or which have the prior approval of the City Administrator.

D. Job-Related shall mean any college level course related to technical or specialized aspects of the employee's position, as well as courses meeting general educational degree requirements, which are reasonably job-related. The City Administrator's determination of the eligibility of any course shall be final and shall be obtained prior to taking a course.

E. Units shall mean semester units (two semesters to a full academic year). Each quarterly or trimester unit shall be counted at a value of .67% of a semester unit.

5.3 Rates of additional compensation:

A. Academic Education. Upon satisfactory completion of 30 units of college level related courses, the employee shall receive a salary increase equal to two and one-half percent (2.5%) of their base salary. Upon attainment of 60 units or the attainment of an Associate Degree, the employee shall receive a salary increase equal to five percent (5%) of base salary.

B. Non-Academic Training or Instruction. For eligible employees, the City Administrator, upon recommendation of the Department Head, may grant prior approval for a course of instruction or training, which would lead to the attainment of EIP. The City Administrator shall be guides in this determination by the value to the City of the employee's knowledge and/or skill accumulation, and by the employee's expenditure of time and effort as compared to that put forth by an employee earning the same level of EIP by the accumulation of college-level units (at approximately 30 to 54 hours per college unit).

C. In no case shall the EIP rate of compensation exceed five percent (5%).

5.4 Eligibility:

In order for employees to be eligible for EP, ALL of the following conditions shall be met:

A. A regular employee shall become eligible once successfully completing 18 months of continuous service to the City except that this period of time may be waived at the discretion of the City Administrator.

B. The education, training or instruction shall be acquired at times when the City does not compensate the employee. Reimbursement to the employee by the City for the costs of books, tuition, or supplies shall not affect eligibility. Scholarships or veterans' benefits shall not be considered compensation.

C. Credit shall not be given for work experience, although an academic institution may have given credit for such experience, until a degree is granted the employee by such institution.

D. The employee shall submit to the City Administrator through the Department Head a list of courses and credits, together with transcripts or other proof of satisfactory completion, as may be required to verify the acquisition of claimed credits.

5.5 Time of payment:

EIP shall be paid to eligible employees beginning with the pay period in which the City Administrator has approved the application for EIP.

5.6 All members shall maintain any license or certification required for his or her position by the Department of Transportation.

ARTICLE 6: LONGEVITY PAY

6.1 Effective the first full pay period following ratification of this MOU, employees with at least 10 years of continuous service with the City of Carmel-by-the-Sea, as a regular, full-time employee shall receive a 5% Longevity Pay premium.

ARTICLE 7: CALPERS RETIREMENT PLAN

7.1 Tier I: Bargaining unit members hired on or before November 1, 2011:

7.1.1 The “2% at 55” retirement formula shall be available to bargaining unit members hired on or before November 1, 2011.

7.1.2 Final Compensation Based on 12-Month Period:

For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section mean the highest consecutive twelve (12) month period.

7.1.3 Required Member Contributions:

Bargaining unit members covered by this section shall continue to pay, through payroll deduction, the 7.0% member contribution.

7.1.4 Pension Cost Sharing:

In addition to paying the 7.0% member contribution, bargaining unit members covered by this Section shall pay, thorough payroll deduction, an additional 3.0% of PERSable compensation towards the City’s costs, for a total contribution of 10% toward the normal cost of pension benefits, as permitted by Cal. Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election by unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Cal. Gov. Code Section 20516.

As soon as practicable after the effective date of this MOU, the City will initiate the PERS contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City’s amendment to the PERS contract, unit member contributions will be made pursuant to Cal. Gov. Code Section 20516. If the contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a PERS contract amendment as authorized by Cal. Gov. Code Section 20516(0. The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

7.2 Tier II: Bargaining Unit Members Hired After November 1, 2011, and Prior to January 1, 2013, and Unit Members Qualified for Reciprocity (Classic Members):

7.2.1 This Section (including subsections) shall apply to bargaining unit members hired on or after November 1, 2011, and prior to January 1, 2013. In addition, this Section shall apply to bargaining unit members hired on or after January 1, 2013, who are qualified for pension

reciprocity as stated in Cal. Gov. Code Section 7522.02(c) and related CalPERS reciprocity (Classic Member) requirements.

7.2.2 The “2% at 60” retirement formula shall be available to bargaining unit members covered by this Section.

7.2.3 Final Compensation Based on Three-Year Final Average Salary:

For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section shall be determined by the average of the final three years of the member’s salary.

7.2.4 Required Member Contributions:

Bargaining unit members covered by this section shall continue to pay, through payroll deduction, the 7.0% member contribution.

7.2.5 Pension Cost Sharing:

In addition to paying the 7.0% member contribution, bargaining unit members covered by this Section shall pay, through payroll deduction, an additional 3.0% of PERSable compensation towards the City’s costs, for a total contribution of 10% toward the normal cost of pension benefits, as permitted by Cal. Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election by unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Cal. Gov. Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the PERS contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City’s amendment to the PERS contract, unit member contributions will be made pursuant to Cal. Gov. Code Section 20516. If the contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a PERS contract amendment as authorized by Cal. Gov. Code Section 20516(0. The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

7.3 Tier III: PEPRA Retirement Tier Required for Bargaining Unit Members Hired On or After January 1, 2013 (Non-Classic Members):

7.3.1 This Section shall apply to bargaining unit members who were hired on or after January 1, 2013, and who do not qualify for pension reciprocity (non-Classic Members) as stated in Cal. Gov. Code Section 7522.02(c).

7.3.2 2% at 62 Formula:

The “2% at 62” retirement formula will be available to bargaining unit members covered by this Section.

7.3.3 Final Compensation Based on Three-Year Final Average Salary:

For the purposes of determining a retirement benefit, final compensation for bargaining unit members covered by this Section shall be determined by the average of the final three years of the member's salary.

7.3.4 Required Member Contributions:

As required by Cal. Gov. Code Section 7522.04(g), effective January 1, 2013, bargaining unit members covered by this Section shall pay, through payroll deduction, fifty percent (50%) of normal costs.

7.3.5 Pension Cost Sharing:

In addition to paying 50% of normal costs as described above, bargaining members covered by this Section shall pay, through payroll deduction, an additional 3.0% of PERSable compensation toward the City's normal cost of pension benefits as permitted by Cal Gov. Code Section 20516.

The parties acknowledge that CalPERS mandates an election of unit members, separate from ratification of this MOU, to provide for this cost sharing pursuant to Government Code Section 20516. As soon as practicable after the effective date of this MOU, the City will initiate the contract amendment process. Upon approval and agreement from the bargaining unit and completion of the City's amendment to the CalPERS contract, unit member contributions will be made pursuant to Government Code Section 20516, Unit member Cost Sharing of Additional Benefits. If the contract amendment is not complete before the effective date of the cost sharing described in this Section, the cost sharing shall be implemented outside of a CalPERS contract amendment as authorized by Government Code Section 20516(f). The Union and the City will take all actions necessary to implement the pension cost sharing agreement described in this Section.

7.4 As permitted by Internal Revenue Code Section 414(h)(2) and Government Code Section 20516, each unit member shall pay through payroll deductions the PERS contributions described in Section 7 with state and federal income tax on the PERS member contribution deferred to the extent permitted by law, including but not limited to, Internal Revenue Code, 26 USC Section 414(h)(2).

7.5 The City shall provide bargaining unit members with those optional benefits which it has elected to provide to bargaining unit members in its contract with CalPERS and in accordance with the Public Employees Retirement Law.

ARTICLE 8: UNION SUPPLEMENTAL RETIREMENT PLAN

8.1 Effective the first pay period after adoption by the City Council of this MOU, the City shall contribute \$1 per hour worked, excluding overtime, to the Laborer's International Union of North America, National (Industrial) Pension Fund, on behalf of each eligible employee who is: 1) represented by the Union, and 2) regularly scheduled to work twenty (20) hours or more per week.

ARTICLE 9: DEFERRED COMPENSATION

9.1 The CITY offers employees the opportunity to participate in a deferred compensation plan on a voluntary basis through the payroll deduction plan. Participation and contributions are guided by the rules and regulations established by the Internal Revenue Service (IRS) for such plan (457 Plans). Nothing in this section shall prohibit or restrict this voluntary participation, in the plan(s) offered by the City.

9.2 The City shall make monthly contributions on behalf of each eligible employee in the amount of \$25. In addition, effective with the first pay period following Council adoption of this Agreement, the City shall match up to \$50 per month of contributions made by the employee. In no case shall the City contribute in excess of \$75 per month to any individual employee's deferred compensation. It shall be the responsibility of the employee to specify the plan and investment option.

ARTICLE 10: UNIFORM REIMBURSEMENT

10.1 Effective the first day of the pay period following the City Council's approval of this agreement, the City will reimburse all represented Union employees for expenditures of up to \$300 per year for items of uniform required for them to perform their jobs, and separately reimburse all represented Union employees for expenditures of up to \$300 per year for work boots required for them to perform their jobs. Employees shall provide receipts for all purposes for which they are requesting reimbursement.

10.2 Effective the first day of the pay period following the City Council's approval of this agreement, the City shall continue to provide uniforms to all represented Union employees who are required to wear them at no cost to the employee.

10.3 The uniform items and cost, including reimbursement costs, for all represented Union employees who are required to wear a uniform is set forth in Appendix A. The parties agree that, to the extent permitted by law, the monetary value of compensation for the cost of uniform items and reimbursement costs are special compensation and shall be reported as such to CalPERS pursuant to Title 2 CCR, Section 571(a)(5) — Statutory Items.

ARTICLE 11: HOURS OF WORK

11.1 Workweek: The normal workweek shall consist of five (5) days, Monday through Friday, inclusive.

11.2 Workday: The normal workday shall consist of eight (8) consecutive hours of work within a maximum nine-hour period, interrupted by an unpaid lunch break of not less than one-half hour nor more than one hour. The normal workday shall fall within the hours between 7:00 a.m., and 6:00 p.m. Input from employees at each work site is welcomed. An employee shall be given seven (7) calendar days' notice before a change in the daily work schedule can be implemented.

11.3 Change in Hours of Work: Should, in the judgment of the City, it be necessary to establish daily or weekly work schedules departing from the normal workday or the normal workweek for a period exceeding two (2) weeks, the City shall meet and discuss the proposed change with the UNION at least ten (10) days in advance, except in cases deemed to be an emergency by the City Administrator.

11.4 Alternative Work Schedules: During the term of this Agreement the parties may mutually agree to meet and confer regarding alternative work schedules. Notwithstanding subsections A and B above, the CITY and the UNION may agree to establish alternative work schedules consisting of forty (40) hours in a work week or eighty (80) hours in a bi-weekly period. Alternative work schedules may be implemented on a Department-by-Department basis.

11.4.1 Employees shall be scheduled to work eighty (80) hours within a nine (9) consecutive day period. The scheduled day off shall be either a Friday or Monday, providing that this work schedule for the library employees does not cause a reduction of hours the library is open to the public.

11.5 Rest Periods: During their normal eight (8) hour workday, employees will be granted two (2) fifteen (15) minute rest periods in the approximate middle of each half shift, which may be scheduled by the City.

ARTICLE 12: HOLIDAYS

12.1 The following 12 holidays shall be observed:

1. New Year's Day, January 1st
2. Martin Luther King Day, Third Monday of January
3. Lincoln's Birthday, February 12th
4. President's Day, Third Monday of February
5. Memorial Day, Last Monday of May
6. Independence Day, July 4th
7. Labor Day, First Monday of September
8. Veterans' Day, November 11th
9. Thanksgiving Day, Fourth Thursday in November
10. Friday after Thanksgiving, Day after Thanksgiving
11. Christmas Eve, December 24
12. Christmas Day, December 25

12.2 In the event a holiday falls on a Saturday, Municipal Departments shall remain open on the preceding Friday, but employees shall be given either the preceding Friday or the following Monday, at the discretion of the Department Head and City Administrator, as an in-lieu holiday. In the event a holiday falls on a Sunday it shall be observed on Monday.

ARTICLE 13: GENERAL LEAVE

13.1 Each bargaining unit employee covered by this Agreement shall be entitled to two days (a maximum of 16 hours) of general leave per year during the period of the contract.

The Department Head or City Administrator shall approve use of general leave. General leave may not be accumulated from one year to the next.

ARTICLE 14: EXECUTIVE LEAVE

14.1 The CITY shall grant each Exempt member of the UNION eighty (80) hours annual Executive Leave. This leave must be taken during the fiscal year in which it is earned. There will be no ability to carry over this leave from one fiscal year to the next and there shall be no cash pay off for any such unused leave.

ARTICLE 15: VACATION ACCRUAL PLAN

15.1 The following vacation accrual schedule shall be in effect:

1— 4 years of service:	80 hours per year
5 — 10 years of service	120 hours per year
11 — 15 years of service:	160 hours per year
15 years of service and over:	176 hours per year

15.2 Vacation accrual will be reflected in the City's books on a month-to-month basis in hours.

15.3 The maximum amount of vacation time that may be held in an unused status shall be the amount an employee is entitled to accrue in two (2) anniversary years. The Department Head may grant exceptions with approval by the City Administrator.

15.4 The CITY agrees to recommend that the City Council eliminate Municipal Code 2.52.630 (Vacations: Eligibility of Use).

15.4 The parties agree that members of the UNION will have the option, subject to approval by the City administrator, to sell up to eighty (80) hours of accumulated vacation per fiscal year to the CITY in exchange for compensation at the employee's hourly rate in the fiscal year sold.

ARTICLE 16: BEREAVEMENT LEAVE

16.1 Each member of the UNION shall be entitled to use twenty four (24) hours of bereavement leave each fiscal year for serious illness, disability, or death in the employee's immediate family. If the employee exhausts the 24 hours of bereavement leave, the employee shall be permitted to use up to two days of accrued sick leave as bereavement leave. If the employee exhausts the 24 hours of bereavement leave and has used two additional days of sick leave, and experiences an additional incident qualifying for bereavement leave in the same calendar year, the employee shall be permitted to use up to an additional five days of accrued sick leave as bereavement leave.

16.2 Immediate family is defined as the employee's spouse, child, step-child, parent, step-parent, grandparent, sibling, mother-in-law, father-in-law, sister-in-law, and brother-in-law, registered domestic partner, or any other person approved by the Department Head The

Department Head may require the employee to furnish satisfactory proof to substantiate the use of bereavement leave. Bereavement leave shall not be subtracted from an employee's sick leave account and shall not accrue from one fiscal year to the next.

ARTICLE 17: SICK LEAVE

17.1 The CITY shall continue to grant each member of the UNION eight (8) hours of sick leave per month. These days are to be used in accordance with the procedure(s) outlined below and in the Personnel Ordinance of the Municipal Code of the City of Carmel-by-the-Sea (Sections 2.52.660-2.52.685).

17.2 Sick leave shall be charged against an employee's credit only for regular working days and shall not be charged for time absent on holidays or other authorized days off. Charges against an employee's credit shall be rounded off to the lowest hour, for example:

<u>Time off work</u>	<u>Time charged</u>
59 minutes or less	0
1 hour	1 hour
1 hour and any segment of the next hour	1 hour

A. Medical appointments of 90 minutes or less, with written physician verification, shall not be charged to an employee's sick leave account.

B. Medical appointments of 90 minutes or less, without written physician verification, shall be charged to employee's sick leave account in 15-minute segments.

C. If an employee becomes sick on scheduled vacation time, the Department Head may, with acceptable documentation, authorize the use of sick leave instead of vacation leave.

17.3 Employees hired after 1 November 1984 shall be able to accumulate an unlimited number of sick leave hours. A maximum of six hundred (600) hours will be the total amount for which the City will reimburse the employee upon termination or resignation from employment. This provision does not apply to employees with less than five (5) years of continuous service, who shall not be entitled to any compensation under this section.

For employees with more than five (5) years of service:

A. Resignation from employment after five (5) years will result in reimbursement at 25% of 600 hours maximum, times the actual hourly rate at the time of resignation.

B. Retirement from CITY employment after five (5) years and with proof of submission of application for retirement from CalPERS will result in reimbursement at the rate of 50% of 600 hours maximum, times the actual hourly rate at the time of retirement.

C. Employees with fewer than five (5) years of service shall not be entitled to cash out any sick leave upon separation from service.

17.4 An employee shall be permitted to use up to forty-eight (48) hours of sick leave per year for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or employee's family member. Any use of sick leave for this purpose beyond 48 hours per year shall be permitted with the approval of the Department Head.

A. Employees who are victims of domestic violence, sexual assault or stalking shall be permitted to use up to 48 hours of sick leave per year to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child; or to seek medical attention for injuries caused by the domestic violence, sexual assault, or stalking; to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; to obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; and to participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation. Any use of sick leave for this purpose beyond 48 hours per year shall be permitted with the approval of the Department Manager.

B. For purposes of this policy, "family member" shall include any of the following: a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis, regardless of the child's age or dependency status; a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; a spouse; a State of California registered domestic partner; a grandparent; a grandchild; and a sibling.

17.5 Pursuant to Government Code Section 20965 to the City's CalPERS retirement contract, an employee may elect to use sick time available to him/her under the provision of the contract for sick leave service credit. If an employee elects to use sick leave available for service credit, such time cannot also be applied to the "sell back" provision under this section.

ARTICLE 18: CATASTROPHIC ILLNESS/SICK LEAVE HOURS TRANSFER

18.1 When an employee or a member of the employee's immediate family has suffered a catastrophic illness or major injury such employee may request to take a paid leave of absence utilizing sick leave donated by other employees, subject to the approval of the City Administrator in his/her sole discretion. The City Administrator's authorization makes no guarantee that paid leave will be donated by other employees.

To be eligible, an employee must have exhausted all of this/her sick, vacation, compensatory and executive leave. If approved, leave shall be transferred on an hour-for-hour basis. Donated hours shall not be counted for purposes of accrual of other paid leave or seniority, unless required by law.

Employees may donate accrued sick leave so long as they provide written consent to the City confirming they are voluntarily donating such leave, and maintain a minimum balance of 80 hours after the transfer.

ARTICLE 19: PHYSICAL EXAMINATIONS

19.1 Each employee covered by the UNION, under the age of forty-five (45) shall be entitled to a physical examination every other year during the term of the contract, subject to the financial guidelines stated in this section. Employees in this category who had a City paid physical in the fiscal year just prior to the fiscal year of this contract shall not be entitled to a City paid physical during the period of this contract.

19.2 Employees who turn forty-five (45) years of age during the term of this contract shall be entitled to one City paid physical per year after attaining that age and subject to the financial guidelines stated in this section.

19.3 Employees forty-five (45) years of age or older shall be entitled to one City paid physical examination per fiscal year, subject to the financial guidelines stated in this section. The City shall pay up to two hundred and twenty-five dollars (\$225.00) for the physical examination and accompanying tests. Any expense in excess of this amount shall be borne by the employee.

19.4 Physical examinations may be performed by a licensed physician of the employee's choice. The physician shall complete a Physician Evaluation Report Form. Payment shall be made upon receipt by the Human Resources Office of the form and a statement of all charges, within ninety (90) days from date-of-service.

ARTICLE 20: TUITION ADVANCEMENT

20.1 The CITY recognizes the financial burden placed upon UNION members who must pay advance registration, tuition and book fees to continue pursuit of collegiate degrees in their professional disciplines. To this end the CITY and UNION agree to the following program:

A. The CITY shall pay, in advance of the course(s) being taken, registration, tuition and book fees for UNION members.

B. All courses and programs shall be approved in advance of enrollment by the City Administrator for a determination of job relevancy.

C. At the completion of the course(s), the employee shall submit to the City Administrator, proof of satisfactory completion of the course(s).

D. In the event the employee does not satisfactorily complete the course(s), the employee shall reimburse the CITY for all advances paid by the CITY on behalf of the employee. A timetable for reimbursement shall be determined on a case-by-case basis by the City Administrator.

E. The maximum amount that is allowed in a fiscal year for the Tuition Advancement program is \$1,000 per UNION member.

ARTICLE 21: INSURANCE PROGRAMS

21.1 The City offers a variety of insurance protection programs for the employee and dependents. Some protection is provided through fully insured instruments. Other protection is provided through a City self-funded program. Other protection is employee funded.

21.2 For the purposes of this section the following definitions and groupings of coverage shall exist:

A. Non-Elective Core Coverage's: (City Paid)

(1) Mandatory per month employer contribution required by CalPERS for each employee enrolled in the CalPERS medical protection program.

(2) Employee/dependent dental premium, established by the City's provider of record, depending on the level of coverage chosen.

(3) Collective employee/dependent vision premium established by City's provider of record.

(4) Basic \$30,000 life insurance premium (available only to full-time and regular part time employees).

(5) Accidental Death and Dismemberment Policy (available only to full-time and regular part time employees).

B. Elective (non-core) coverage (Employee Paid): available for purchase with flexible spending monies available to eligible employee:

(1) Employee and/or dependent medical coverage in the CalPERS Program less the mandatory per month required employer payment.

(2) I.R.C. Section 125 - Flexible Spending Account

(3) I.R.C. Section 125 - Dependent Care

C. Section 125 Plan: The City's insurance plan is structured within this tax-deferred program. This is an Internal Revenue Code permitted plan. A third-party administrator provides administration of the plan.

21.3 For eligible employees enrolled in a Public Employee Medical and Hospital Care Act (PEMHCA) Medical Plan, the City will make a maximum medical premium contribution, based on employee choice, that is either equal to 100% of the cost of the premiums for the lowest cost PPO or HMO plan offered or 80% of the cost of premiums for any other offered health plan, whichever provides the lowest cost to the employee.

The Parties agree to an automatic re-opener of this provision if the cost to the City of paying 100% of the premiums for the lowest cost PPO or HMO plan offered is projected to increase by more than 20% compared to the cost in the prior year.

21.4 The City agrees to maintain the contract for Group Long Term Disability Insurance (LTD). The cost of this insurance shall continue to be fully paid by participating employees. Participation in the plan is voluntary. Continuation of the coverage requires seventy-five percent (75%) participation by all eligible employees (benefited full-time and part-time).

21.5 Plan Contents and Monthly Rates:

A. Life Insurance and Accidental Death/Dismemberment Insurance (AD&D)
(Only available to full-time and benefited part-time employees):

Provider: Life Insurance — Standard Insurance Company

Rates: \$.32 per \$1000 Benefit (Basic Life)

\$.04 per \$1000 of Benefit (Basic AD&D)

Provider: AD&D Insurance — Standard Insurance Company

Rates:

All employees: \$ 1.50 p/month

B. Vision Insurance:

Vision insurance is available through Vision Service Plan (VSP). Employees shall be enrolled in the City's vision care health plan. The City shall pay 100% of the premium for the VSP Core (City Paid) plan for employee and eligible dependents. Employees have one option to purchase a buy-up option that is fully paid by the employee.

C. Dental Insurance:

Dental insurance is available through Delta Dental. The City will pay 100% of the premium for the Delta Dental Core (City Paid) plan for employee and eligible dependents. Employees have two options to purchase a buy-up option that is fully paid by the employee

D. Medical Insurance: CalPERS Plan (PEMHCA): subject to terms and conditions of by the Public Employees' Medical and Hospital Care Act (PEMHCA).

21.6 Retirees and Other Qualified Employees:

A. The City agrees to fund the minimum mandatory per month for medical coverage plus the administrative cost (based on total monthly premium) for currently enrolled retirees and eligible and enrolled un-benefited hourly employees, as required by CalPERS.

B. The City agrees to provide additional minimum funding as needed for existing retirees, active or hourly employees who currently are not participating in the medical program, but who would be eligible under CalPERS guidelines.

21.7 Opting Out (Medical Program Only): Eligible employees may elect not to participate in the CalPERS medical plan. Anyone opting out shall only be eligible to take cash in the amount of \$291 per month providing they meet the following conditions:

- A. They shall submit proof of medical legally compliant coverage elsewhere.
- B. They shall sign a medical plan waiver.
- C. Married employees shall be required to obtain the signature of their spouse on the medical plan waiver form.
- D. Employees under legal order to provide medical coverage for any dependents shall only be permitted to opt out after showing proof of coverage for each dependent identified in such legal order.

21.8 The City and Association will review the dental and vision plans to identify the most affordable and viable plan without increasing the plan(s) premium.

22.9 Flexible-Spending/Dependent Care Contribution: The City will match up to \$25 per pay period of an employee's contribution to either a City provided plan's flexible spending or dependent care account. The City's matching contribution will not exceed \$25 per individual employee per pay period. Retirees are not eligible for this matching contribution.

ARTICLE 22: WORKERS' COMPENSATION: SALARY CONTINUATION NON-SAFETY EMPLOYEES

22.1 Whenever any full-time, miscellaneous (Non-Safety) employee as defined by the Public Employees' Retirement System (PERS), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his/her duties, he/she shall become entitled, regardless of his/her period of service with the City, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments, for the period of the disability, but not exceeding six months, or until such earlier date as he/she returns to duty or is retired on permanent disability pension in accordance with the rules/regulations governing such retirement.

22.2 If the period of disability extends beyond the six month period, full salary continuation shall be discontinued and the employee shall be entitled to legal allowances provided under Workers' Compensation Laws of the State of California which may be integrated with any other compensation to which the employee may be entitled, i.e., Long Term Disability coverage.

22.3 Benefits: During the six month or less period of disability, the employee who suffers such injury/ illness arising out of and in the course of his/her duties shall continue

entitlement to all benefits as would have been afforded that employee had he/she not have suffered such injury/illness.

ARTICLE 23: OTHER BENEFITS

23.1 Jury Duty: The CITY provides time off with no loss of salary for employees who must fulfill jury duty obligations. Employees shall be entitled to keep the mileage reimbursement for such service. Any per diem amount received by the employee shall be signed over to the CITY.

23.2 Automatic Deposit: The CITY, upon authorization from any employee, shall make direct deposits to the financial institution of the employee's choice, through the City's duly authorized financial institution. The employee's financial institution must have direct deposit capabilities.

23.3 Payroll Deductions: Employee funded insurance programs, deductions for deferred compensation programs, and UNION dues shall be paid through payroll withholding.

23.4 Wellness Reimbursement: The City will provide any employee in the unit with a reimbursement of up to \$50/month to defray costs of a membership to a licensed gym/health club/fitness facility of the employee's choosing. This reimbursement will be provided on a semi-annual basis in arrears (July and January).

23.5 In order for employees to be reimbursed, they must provide evidence of payment for such membership in the form of cancelled checks, a credit card statement, or other payment verification deemed acceptable by the Finance Manager which provides verification the membership payment over a six-month period.

Requests for reimbursements must be received by the City no later than the end of the month following the reimbursement period (e.g., requests for reimbursements for the period July-December must be received by the City on or before January 31; requests for reimbursements for the period January — June must be received by the City on or before July 31) in order to receive payment.

23.6 Layoff Policy: Per Resolution 92-90, the policies and procedures for the layoff of City employees are incorporated herein as "Exhibit 1" to the MOU.

ARTICLE 24: EXEMPT STATUS

24.1 As of July 1, 2022, all employees and positions covered by this Agreement have been determined to be exempt in accordance with the Fair Labor Standards Act and are accordingly not entitled to overtime, and/or compensatory time, and/or standby or callback time

ARTICLE 25: IMPASSE RESOLUTION

25.1 The parties agree to utilize the Meyers-Milias-Brown Act (MMBA) impasse resolution process and include the City's mediation component, as outlined in this section.

25.2 Definition: “Impasse” means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

25.3 Mediation:

A. The parties agree that prior to initiating the MMBA impasse procedure; the dispute shall be submitted to a mediator from the California State Mediation and Conciliation Service. Costs for mediation services, if any, shall be borne equally by the City and the Employee UNION.

B. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

ARTICLE 26: MANAGEMENT RIGHTS

26.1 It is understood and agreed that the CITY retains all of its powers and authority to manage municipal services and the work force performing those services.

26.2 It is agreed that during the term of this contract the CITY shall not be required to meet and confer on matters, which are solely a function of management, including the right to:

A. Determine and modify the organization of City government and its constituent work units.

B. Determine the nature, standards, levels, and mode of delivery of services to be offered to the public.

C. Determine the methods, means, and the numbers and kinds of personnel by which services are to be provided.

D. Determine whether goods or services shall be made or provided by the City, or shall be purchased, or contracted for.

E. Establish employee performance standards and to require compliance therewith.

F. Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline employees, subject to the requirements of applicable law including the current Personnel Ordinance.

G. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons.

H. Implement rules, regulations, and directives consistent with all applicable laws and the specific provisions of the Memorandum of Understanding.

I. Take all necessary actions to protect the public and carry out its mission in emergencies.

26.3 Decisions under this section shall not be subject to the grievance procedure unless specifically authorized by the Personnel Ordinance or other applicable law.

26.4 The City will meet and confer on the exercise of the foregoing Management Rights where such exercise falls within the scope of representation as defined by the MMBA.

26.5 Without waiving any of its management rights, the City agrees to participate in quarterly Joint Labor and Management Committee (“JLMC”) meetings during the term of this MOU. The City also agrees to participate in additional JLMC meetings to discuss specific topics including but not limited to the following anticipated topics: 1) types of work performed (clerical vs. management duties; 2) clarification/addressing of out-of-class issues; 3) workspace enhancements/HVAC issues; 4) remote work/telework possibilities; and 5) number/use of City/personal vehicles. Prior to any JLMC meeting, the parties will agree on an advanced agenda that identifies participants, topics to be covered, whether they involve management rights or negotiable decisions, and/or negotiable effects, as well as the parties’ intended outcome (e.g. consideration of employee input into management decision, new/revised policy, side letter/letter of agreement).

ARTICLE 27: UNION SECURITY/ACCESS

27.1 New Employee Orientation:

A. New employee orientation shall occur within seven (7) days of an employee’s hire. The Union will be provided not less than ten (10) calendar days’ advanced notice of the time, date and location of the orientation. The Union will be given up to thirty (30) minutes during the orientation to present Union membership information. Attendance of the new employee at the Union’s portion of the orientation is mandatory. Management representatives will excuse themselves during the Union portion of the orientation. Employee representatives conducting the orientation shall be granted paid release time to attend including reasonable travel time if needed.

B. The City will provide the Union a digital file via e-mail to the Association President and Labor Relations Representative containing the following information:

- Name
- Job title
- Department
- Work location
- Work, home, and personal cellular telephone numbers
- Home address

The City shall not be required to supply employee information it does not have.

27.2 Maintenance of Membership/Separation from Unit:

A. Employees who are dues paying Union members at the time of the signing of this agreement or who become dues paying members during the term of the agreement shall remain dues paying members for the duration of the agreement. Employees may opt out of Union membership by providing written notice to the Union during the thirty (30) day period prior to the expiration of this agreement.

B. The provisions of this Agreement shall not apply during periods that an employee is separated from the representation unit but shall be reinstated upon the return of the employee to the representation unit. The term “separation” includes transfer out of the unit, layoff, and leave of absence with duration of more than thirty (30) days.

ARTICLE 28: HARASSMENT POLICY

28.1 The City agrees to meet and consult with the union before any changes to the City’s harassment policy are presented to the City Council.

ARTICLE 29: SEPARABILITY

29.1 If a court of competent jurisdiction finally determines that any provision of the Memorandum of Understanding is invalid and unenforceable, such provision shall be separable, and the remaining provisions of the Memorandum of Understanding shall remain in full force and effect.

ARTICLE 30: EFFECT OF AGREEMENT

30.1 This Memorandum of Understanding sets forth the full and complete understanding between the parties hereto. Any items, from previous agreements; not addressed in this agreement are carried forward.

ARTICLE 31: SIGNATURES

31.1 For the City of Carmel-by-the-Sea:

Chip Rerig, City Administrator

Dated

31.2 For the Carmel-by-the-Sea General Employees Association:

Ryan Heron, Chief Negotiator
Union of Public Employees of California—
Local 797

Dated

Dated

Dated

Appendix “A”
Uniform Items: Costs and Reimbursements*

The City will provide Uniforms and equipment for employees as follows:

Job Classification	Items Provided
• City Forester • Facilities Maintenance Supervisor • Public Works Superintendent	- Pants - Shirt - Jacket - Chaps 1 - Helmets with Screens’

The City agrees to make available/furnish protective equipment to all classes listed above in addition to the classes of Associate, Principal, and Senior Planner if requested and/or deemed necessary which includes, but may not be limited to:

- Hat (baseball cap or visor)
- Hard Hat
- Rain Gear
- Safety Vest
- Eye and/or Ear Protection
- Gloves

The City agrees to reimburse the classes listed below up to \$300 each fiscal year for the purchase and repair of safety related footwear which must be worn at all times while on duty. Each department head will determine the specifics of the footwear required.

- City Forester
- Facilities Maintenance Supervisor
- Public Works Superintendent

The City agrees to reimburse the classes listed below up to \$300 each other fiscal year (odd numbered years) for the purchase and repair of safety related footwear, which must be worn at all times while in the field. Each department head will determine the specifics of the footwear required:

- Associate Planner
- Senior Planner



City of Carmel by the Sea

MANAGEMENT EMPLOYEES UNIT (affiliated unit of LiUNA)

City Council Meeting: August 6, 2024/Reso #2024-xxx

SALARY SCHEDULE

Effective July 1, 2024

4% effective July 1, 2024							
Classification	Grade	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
Accountant	M-351	Hourly:	\$58.51	\$61.44	\$64.51	\$67.73	\$71.12
		Monthly:	\$10,141.73	\$10,649.60	\$11,181.73	\$11,739.87	\$12,327.47
		Annual:	\$121,700.80	\$127,795.20	\$134,180.80	\$140,878.40	\$147,929.60
Associate Planner	M-284	Hourly:	\$41.89	\$43.98	\$46.18	\$48.49	\$50.91
		Monthly:	\$7,260.93	\$7,623.20	\$8,004.53	\$8,404.93	\$8,824.40
		Annual:	\$87,131.20	\$91,478.40	\$96,054.40	\$100,859.20	\$105,892.80
Building (Facility) Maint Supervisor	M-298	Hourly:	\$44.92	\$47.17	\$49.52	\$52.00	\$54.60
		Monthly:	\$7,786.13	\$8,176.13	\$8,583.47	\$9,013.33	\$9,464.00
		Annual:	\$93,433.60	\$98,113.60	\$103,001.60	\$108,160.00	\$113,568.00
City Forester	M-357	Hourly:	\$60.31	\$63.33	\$66.49	\$69.82	\$73.31
		Monthly:	\$10,453.73	\$10,977.20	\$11,524.93	\$12,102.13	\$12,707.07
		Annual:	\$125,444.80	\$131,726.40	\$138,299.20	\$145,225.60	\$152,484.80
Principia Planner	M-363	Hourly:	\$64.50	\$67.73	\$71.12	\$74.68	\$78.41
		Monthly:	\$11,180.00	\$11,739.87	\$12,327.47	\$12,944.53	\$13,591.07
		Annual:	\$134,160.00	\$140,878.40	\$147,929.60	\$155,334.40	\$163,092.80
Public Works Superintendent	M-357	Hourly:	\$60.31	\$63.33	\$66.49	\$69.82	\$73.31
		Monthly:	\$10,453.73	\$10,977.20	\$11,524.93	\$12,102.13	\$12,707.07
		Annual:	\$125,444.80	\$131,726.40	\$138,299.20	\$145,225.60	\$152,484.80
Senior Planner	M-351	Hourly:	\$58.51	\$61.44	\$64.51	\$67.73	\$71.12
		Monthly:	\$10,141.73	\$10,649.60	\$11,181.73	\$11,739.87	\$12,327.47
		Annual:	\$121,700.80	\$127,795.20	\$134,180.80	\$140,878.40	\$147,929.60



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

August 6, 2024
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Brandon Swanson, Assistant City Administrator

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2024-069 of the City Council of the City of Carmel-by-the-Sea amending the At-Will (Unrepresented) salary ranges to incorporate and align with Cost of Living Adjustments (COLAs) for the Management (LiUNA) Unit, in accordance with Municipal Code 2.52.520, effective August 1, 2024

RECOMMENDATION:

Adopt Resolution 2024-069 of the City Council of the City of Carmel-by-the-Sea amending the At-Will (Unrepresented) salary ranges to incorporate and align with Cost of Living Adjustments (COLAs) for the Management (LiUNA) Unit, in accordance with Municipal Code 2.52.520, effective August 1, 2024.

BACKGROUND/SUMMARY:

Council recently approved Cost of Living Adjustments in a tentative agreement with the Management (LiUNA) Unit, which resulted in a two-year contract with a 4% salary increase effective July 1, 2024, and 4% increase effective July 1, 2025. At-Will (unrepresented) employees are not recognized nor represented for the purpose of collective bargaining over salary, benefits, and/or working conditions. Salary and benefit provisions for the At-Will positions remain static and do not increase unless approved by City Council. The At-Will salaries were last updated in January 1, 2024, six months after the Management and General Units received their contractual Cost of Living Adjustments.

Establishing and aligning COLAs more closely to the Management Unit on a consistent basis, after City Council's authorization of Cost of Living Adjustments with a represented unit, is critical for recruitment and retention purposes, but also to avoid salary compactions between the At-Will positions and those they manage. Staff is proposing a similar COLA in alignment with represented Management Unit of 4% salary increase effective on August 1, 2024, with a subsequent 4% COLA effective August 1, 2025.

The increases proposed are not only in line with our own internal represented units, but also many neighboring cities (i.e. City of Monterey, City of Pacific Grove, City of Marina, and City of Seaside) are moving towards implementation of COLAs and market equity adjustments for all position levels. As such, Staff recommends moving forward to enhance our ability to attract and retain talent while maintaining market comparability and internal salary equity.

Staff will incorporate the changes into the salary schedule as required by the CalPERS Regulations upon City Council approval, and return to City Council for authorization if any increases are determined necessary in the future.

FISCAL IMPACT:

The Year 1 salary increase (4%) is \$87,930.72, Year 2 salary increase (4%) is \$91,447.95. The recently approved FY 24/25 Budget includes sufficient appropriations for the revised salary schedule.

PRIOR CITY COUNCIL ACTION:

None for this item.

ATTACHMENTS:

Attachment 1) Resolution 2024-069

Attachment 2) Exhibit A - At-Will (Unrepresented) Salary Schedule

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

Attachment 1

RESOLUTION NO. 2024-069

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AMENDING THE AT-WILL (UNREPRESENTED) SALARY RANGES TO INCORPORATE AND ALIGN WITH COST OF LIVING ADJUSTMENTS (COLAs) FOR THE MANAGEMENT UNIT, IN ACCORDANCE WITH MUNICIPAL CODE 2.52.520, EFFECTIVE AUGUST 1, 2024

WHEREAS, Municipal Code 2.52.520 provides that the City Council establishes the legal current salary range from the salary schedule for each class of position; and

WHEREAS, the California Public Employee's Retirement Law, at Section 570.5 of the California Code of Regulations Title 2, requires the City to publish pay rates and ranges on the City's internet site and the City Council to approve the pay rates and range in its entirety each time a modification is made; and

WHEREAS, the At-Will (unrepresented) classifications do not receive Cost of Living Adjustments (COLA) or salary adjustments on an annual basis such as employees represented by bargaining units; and

WHEREAS, At-Will (unrepresented) salaries were last updated January 1, 2024, six months after the Management and General Units received their contractual COLAs; and

WHEREAS, establishing and aligning COLAs across all units on a consistent and annual basis is critical for recruitment and retention of At-Will employees; and

WHEREAS, staff recommends that the City Council amend the salary At-Will (unrepresented) salary schedules (Exhibit A) to incorporate and align with recently approved COLAs by Council for the Management (LiUNA) Unit; and

WHEREAS, COLA increase approvals across all units moving forward will enhance the City's ability to attract and retain talent while maintaining market comparability and internal salary equity.

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

1. Amend the At-Will (Unrepresented) salary ranges to incorporate and align with recently COLAs by Council for Management and General (LiUNA) Units; and
2. Approved the revised At-Will (Unrepresented) salary Schedule (Exhibit A), effective August 1, 2024.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of August 2024, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk

RESOLUTION 2024-069

EXHIBITS

Exhibit A – Pay rates/salary schedule for At-Will (Unrepresented) positions



City of Carmel by the Sea

AT-WILL (UNREPRESENTED) CLASSIFICATIONS

City Council Meeting: August 6, 2024 | Reso #2024-068

SALARY SCHEDULE

Effective August 1, 2024

					4% effective August 1, 2024	
Pay Band	Classification	Grade	Resolution #	Effective Date	Minimum Annual Salary	Maximum Annual Salary
	City Administrator	W-1CA	<i>pending approval</i>			\$241,087.60
1	Assistant City Administrator	W-1ACA	<i>pending approval</i>		\$193,752.55	\$235,507.21
	Public Safety Director	W-1	<i>pending approval</i>	-	\$193,752.55	\$235,507.21
2	Public Works Director	W-1PWD	<i>pending approval</i>	-	\$189,824.63	\$230,733.29
	Community Planning and Building Director	W-2CPBD	<i>pending approval</i>	-	\$189,824.63	\$230,733.29
3	Police Commander	W-443PC	<i>pending approval</i>	-	\$167,572.99	\$203,686.91
	Library and Community Activities Director	W-440DL	<i>pending approval</i>	-	\$167,572.99	\$203,686.91
4	Finance Manager	W-459FM	<i>pending approval</i>	-	\$151,863.64	\$184,591.26
	Human Resources Manager		<i>pending approval</i>	-	\$151,863.64	\$184,591.26
	Information Services/Network Manager	W-403IS	<i>pending approval</i>	-	\$151,863.64	\$184,591.26
	City Clerk	W-400CC	<i>pending approval</i>	-	\$151,863.64	\$184,591.26
5	Environmental Compliance Manager	W-377EC	<i>pending approval</i>	-	\$125,438.73	\$152,448.08
	Project Manager	W-10	<i>pending approval</i>	-	\$125,438.73	\$152,448.08
	Building Official	W-366BO	<i>pending approval</i>	-	\$125,438.73	\$152,448.08
6	Senior Human Resources Analyst	W-362SA	<i>pending approval</i>	-	\$103,452.12	\$129,513.63
7	Deputy City Clerk	W-342DC	<i>pending approval</i>	-	\$89,359.30	\$108,606.79
	Administrative Analyst	W-7AA	<i>pending approval</i>	-	\$89,359.30	\$108,606.79
8	Executive Assistant*	W-3EXA	<i>pending approval</i>	-	\$89,881.48	\$97,214.21
9	Administrative Technician	W-9AT	<i>pending approval</i>	-	\$75,915.80	\$92,317.05



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

August 6, 2024
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Mary Bilse, Environmental Programs Manager
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2024-070, authorizing the City Administrator to execute a Construction Contract with Pro-Ex Construction, Inc., in the amount, with a 15% contingency, of \$168,360 for the Sunset Center Cottages Window Repairs Project

RECOMMENDATION:

Adopt Resolution 2024-070, authorizing the City Administrator to execute a Construction Contract with Pro-Ex Construction, Inc., in the amount, with a 15% contingency, of \$168,360 for the Sunset Center Cottages Window Repairs Project.

BACKGROUND/SUMMARY:

In June 2023, Council adopted the Capital Improvement Program (CIP) Budget for Fiscal Year (FY) 2023/2024 which included a combined budget of \$649,000 for Facility Renovation Projects which included the Sunset Center Cottages Window Repairs Project. In June 2024, Council adopted the CIP Budget for FY 2024/2025 which included a combined budget of \$527,000 for Facility Renovation Projects which included the Sunset Center Cottages Window Repairs Project and the City Hall Reroof Project.

The Project includes the removal and replacement of existing, failing windows. Work consists mainly of removal and replacement of exterior trim components, not glass. The historical windows will be repaired and/or replaced in "like-kind" to match the existing windows. The Contractor has the option to remove the windows to work on them off-site. Work also includes Hazmat (asbestos and lead paint) abatement and painting to match the existing windows.

In August 2022, Council adopted Resolution 2022-065, awarding a Professional Services Agreement (PSA) to Ausonio, Inc. for Project Management Services for delivery of nine facility renovation projects, including this Project. In July 2024, Council Adopted Resolution 2024-052, awarding an amendment to the PSA to Ausonio, Inc. for five CIP projects including this Project. In September 2022, the City entered into an Agreement with M3 Environmental for On-Call Hazardous Materials Testing and Monitoring Services and amended the contract on January 31, 2024.

In August 2023, four projects were bundled together, design plans and specifications were prepared by architectural and hazardous materials testing firms, and bidding documents were compiled by Ausonio, including:

1. City Hall Roof Replacement
2. Sunset Center Hazardous Materials Remediation and Exterior Painting
3. Sunset Center Cottage Window Repairs
4. Harrison Memorial Library (HML) Hazardous Materials Remediation and Exterior/Interior Painting

Bids for the four bundled projects came in over-budget and no contract was awarded.

In May 2024, Ausonio, Inc., separated out the Sunset Center Cottages Window Repairs Project and put it back out to bid as a new bid solicitation. Drawings and specifications were provided by Ten Over Studio Architects. The Project was extensively advertised for bids. Notices were published in the Carmel Pine Cone, Central Coast Builders Association, and posted on the City's and other public purchasing websites. In addition, courtesy calls and emails were made to twenty-nine contractors and subcontractors, including the two who attended the non-mandatory pre-bid and site tour on June 4, 2024. Two bid proposals were received and opened at a Public Bid Opening held on June 27, 2024, with the following results:

Contractor Name	Base Bid Amount
Pro-Ex Construction, Inc.	\$146,400
LWG Construction, Inc.	\$479,930.85

Both bids were responsive. Pro-Ex Construction, Inc.'s total bid amount of \$146,400 falls within the project team's estimate and the City budget for this Project.

Pro-Ex Construction possesses B-General Building and C-33 Painting and Decorating Contractor's licenses. Established in 2011, they are a Rancho Cordova, California based business. Pro-Ex had favorable references, and in the past few years have completed eight Public Works projects for eight clients.

A 15% contingency is recommended. Window replacement projects have inherent risks, especially with historic buildings which cannot be damaged or put out of service for an extended period. A dry rot allowance of \$10,000 is included in the base bid amount. Should differing site conditions warrant an urgent field change, this contingency would be immediately available. Any funds remaining would be returned to the CIP fund balance.

Work will be completed within nine weeks following issuance of the Notice to Proceed. The cottages will remain open during construction of the Project. The Contractor's staging area will located in the parking lot behind the cottages. The Contractor will be provided with a schedule of cottages classes and events and will coordinate with building occupants to minimize disruptions to the greatest extent possible.

FISCAL IMPACT:

Council appropriated \$527,000 to complete the Facility Renovation Projects which included the Sunset Center Cottage Window Repairs Project in the FY 2024/25 Capital Improvement Budget in Account Number 124FM-FACRENO. Total estimated expenses for this Project, including the cost for this construction contract and contingency, is \$212,785 as listed below:

No.	Company	Services	Cost
1	Ausonio, Inc.	Project Management and Construction Management	\$15,000
2	Ten Over Studio Architects	Plan Drawings and Specifications	\$16,900
3	Pro-Ex Construction,	Sunset Center Cottage	\$146,400

	Inc.	Window Repairs	
4	Pro-Ex 15% Contingency	Unforeseen conditions	\$21,960
5	M3 Environmental, LLC	Hazardous Materials Testing and Monitoring	\$12,525
		Total	\$212,785

Therefore, there is sufficient funding to award this contract.

PRIOR CITY COUNCIL ACTION:

September 12, 2023: Resolution 2023-082, rejecting all bids received for four Facility Renovation Projects, and directing staff to evaluate alternative contracting methods before re-advertising for bids.

In June 2024, Council adopted Resolution 2024-047 approving the CIP Budget for FY 2024/25 which reset a combined budget of \$527,000 for this Project and the City Hall Reroof Project.

ATTACHMENTS:

Attachment 1) Resolution 2024-070

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

RESOLUTION NO. 2024-070

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONSTRUCTION CONTRACT
WITH PRO-EX CONSTRUCTION, INC. IN AN AMOUNT, WITH CONTINGENCY, OF \$168,360,
FOR THE SUNSET CENTER COTTAGES WINDOW REPAIRS PROJECT**

WHEREAS, the Sunset Center Cottages Windows are in disrepair and are continuing to progressively deteriorate; and

WHEREAS, in June 2023, Council adopted Resolution 2023-067 approving the carry- over of prior Fiscal Year Capital Improvement Projects, including four Facility Renovation Projects, with a carryover budget of \$649,000; and

WHEREAS, in the Summer of 2023, the Sunset Center Cottages Window Repairs Project was bundled with the City Hall Roofing Replacement Project and the Sunset Center and Harrison Memorial Library Painting Projects for efficiency; however, only two bids were received for these four bundled facility renovation projects with bids nearly twice the cost estimate; and

WHEREAS, in September 2023, Council adopted Resolution 2023-082 rejecting all bids and directing staff to evaluate alternative contracting methods before re-advertising for bids; and

WHEREAS, in the Spring of 2024, the Sunset Center Cottages Window Repairs Project was repackaged and extensively re-advertised for bids, and two responsive bid proposals were received at the Public Bid Opening held on June 27, 2024; and

WHEREAS, Pro-Ex Construction, Inc. submitted the low bid of \$146,400 for repairs and like-kind replacement of historic windows, which was in line with the project team's estimate, 70% below the other bidder, and \$66,945 below the bid from the prior, bundled project for the same window repairs project; and

WHEREAS, due to inherent risks associated with historic building renovations and window repair projects, a 15% contingency of \$21,960 is recommended, resulting in a total contract amount of \$168,360; and

WHEREAS, in June 2024, Council adopted Resolution 2024-047 approving the Capital Improvement Program Budget for Fiscal Year 2024/25 which reset a combined budget of \$527,000 for the Sunset Center Cottages Window Repairs Project and the City Hall Reroof Project; and

WHEREAS, sufficient funding is available in the Capital Projects fund account.

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 a Construction Contract with Pro-Ex Construction, Inc., in the amount, with contingency, of \$168,360, for the Sunset Center Cottages Window Repairs Replacement Project.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
this 6th day of August, 2024, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

August 6, 2024
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Ashlee Wright, Director, Libraries & Community Activities
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Review the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library and the list for the Architect Selection Committee

RECOMMENDATION:

1. Review and provide direction on the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library.
2. Review and provide direction on the Architect Selection Committee.

BACKGROUND/SUMMARY:

At the July 7, 2024 Special City Council meeting the City Council reviewed the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library and provided staff with direction to return to Council at the August meeting with the following:

1. Updated language in the RFP specifically in the criteria section calling out the necessity of a library consultant for the project.
2. A draft agreement between the City and the CPLF regarding funding responsibility for the project.
3. Proposed committee members to review the RFP, including 1-2 architects.

The RFP is attached with updates requested by Council highlighted in yellow. The Trustees also received the Architect Selection Committee list from the CPLF for Council review.

At this point in time the draft legal agreement is being reviewed by the CPLF, and is not attached to this report for that reason.

2024 PROJECT TIMELINE TO-DATE

- February 28, 2024: Ad Hoc Committee requested a presentation from a Public Works representative on the current maintenance requirements for both library branches and their criticality.
- March 5, 2024: City Council received a presentation on the proposed FY 2024-2025 Capital Improvement Plan projects, which included the carryover of the Library Facilities Master Plan Phases II-IV and requested an update and presentation on Phase I Library Facilities Master Plan.
- March 20, 2024: At a special Library Board meeting the Library Director and the Public Works Director presented on both the current maintenance requirements for the facilities and a high-level

overview of the Master Plan Phase I report.

- April 2, 2024: At the regular City Council meeting the Library Director and the Public Works Director provided a presentation to the City Council and Council provided staff with direction to solicit community input to inform a Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library.
- May 16, 2024: The first of two workshops to solicit community input to inform the drafting of an RFP was canceled due to lack of public participation.
- May 23, 2024: The second of two workshops to solicit community input to inform the drafting of an RFP was attended by 7 members of the public in addition to representatives from the Board of Trustees and the Carmel Public Library Foundation Board.
- June 19, 2024: The Trustees received the RFP for review, provided staff with feedback, and made a recommendation for Council review and approval.
- July 7, 2024: The City Council provided staff with direction to add language to the RFP, specifically in the criteria section calling out the necessity of a library consultant for the project. In addition, the City Council directed staff to return with a draft agreement between the City and the CPLF regarding funding responsibility for the project. The Council requested that this RFP and agreement return to them for review at the August Council meeting.
- July 29, 2024: The Trustees received the RFP for review, provided staff with feedback, and made a recommendation for Council review and approval. The Trustees also received the Architect Selection Committee list from the CPLF for Council review.

FISCAL IMPACT:

None at this time.

PRIOR CITY COUNCIL ACTION:

Please see chronology above.

ATTACHMENTS:

Attachment 1) RFP

Attachment 2) Architect Selection Committee



City Of Carmel-by-the-Sea

REQUEST FOR PROPOSALS (RFP)

RFP #2024-25-001 **REQUESTS FOR PROPOSALS FOR** **ARCHITECTURAL SERVICES FOR THE** **HARRISON MEMORIAL LIBRARY RESTORATION AND** **RENOVATION PROJECT**



Proposals must be postmarked by Friday, August 23, 2024.

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I. REQUEST FOR PROPOSALS

The CITY OF CARMEL-BY-THE-SEA (hereinafter "City") requests proposals from qualified persons/organizations for the purpose of providing professional architectural services for the renovation of the Harrison Memorial Library. Proposals shall be submitted to

City of Carmel-by-the-Sea
ATTN: Nova Romero
City Clerk
P.O. Box CC, Carmel-by-the-Sea, CA 93921

Proposals must be postmarked no later than Friday, August 23, 2024.

SCOPE OF SERVICES. The City has prepared an outline of required services in Section V. SCOPE OF SERVICES, of this Request For Proposals ("RFP").

REQUESTS FOR CLARIFICATION OF THE RFP. If any Proposer has any question regarding the meaning of any part of this RFP, or finds discrepancies in or omissions from this RFP, the Proposer shall submit via electronic mail a written request for clarification to City Clerk, Nova Romero, nromero@ci.carmel.ca.us. The deadline to submit questions is Friday, August 2, 2024 by 5:00 p.m. All questions and City responses shall be posted on the City's website by 5:00 p.m. on Friday, August 9, 2024.

PROPOSAL INSTRUCTIONS. Instructions for the submission of proposals are set forth throughout this RFP. Proposal shall be no longer than 25 pages in length.

CITY'S REVIEW OF PROPOSALS. All proposals deemed responsive shall be reviewed and evaluated by a committee composed of City representatives, Carmel Public Library Foundation representatives, and members of the public in order to determine which proposal best meets the City's needs. The criteria by which to evaluate proposals is set forth in this RFP. The City reserves the right to extend an invitation for interview, to reject any and all proposals and / or waive any irregularities in any proposal.

AWARD OF AGREEMENT. The City currently anticipates awarding a negotiated professional services agreement for Architectural Services for the Harrison Memorial Library Restoration and Renovation Project. A copy of the City's Professional Services Agreement form is attached in Appendix 1. No proposal or professional services agreement shall be binding upon the City until the Agreement is signed by the selected Proposer and executed by the City.

MANDATORY PRE-PROPOSAL SITE TOUR. The City will hold a mandatory pre-proposal site tour Tuesday, July 23 beginning at 9:00 a.m. at the Harrison Memorial Library at the Northeast corner of Ocean Avenue and Lincoln Street.

II. GENERAL INTRODUCTION AND PROJECT DESCRIPTION

The City of Carmel-by-the-Sea (hereinafter referred to as the “City”) is soliciting proposals from Licensed Architectural firms (hereinafter referred to as “provider” or “Proposer”) to provide professional services for design, community engagement, and preparation of bid documents and construction support for the restoration and renovation of the historic Harrison Memorial Library (herein referred to as the “Library”). The scope of work includes design development, community outreach, engineering, preparation of bid documents, and bidding/construction support for Public Works competitive bidding, construction cost estimating, schedule monitoring, preparation of reports and recommendations, and project management.

The Harrison Memorial Library restoration and renovation project will improve ADA accessibility, in addition to restoring a historic building. A Master Plan was completed by Jayson Architecture in July of 2023 for both the Harrison Memorial and Park Branch Library buildings, however the focus of this RFP and scope of work is only for the Harrison Memorial Library. The selected firm will be tasked to work with the City, Harrison Memorial Library Board of Trustees, and Carmel Public Library Foundation, project managers, and the community at large to validate, amend, or replace the current conceptual program and proceed with the Scope of Work outlined by the City.

III. CITY OF CARMEL AND THE LIBRARY

Carmel-by-the-Sea was first incorporated as a City in 1916. It was founded by artists and writers – among them Jack London, George Sterling, Mary Austin and Robinson Jeffers. Carmel-by-the-Sea is rich in natural beauty and prides itself on its white sand beach, landscaped bluffs, urban forest, and natural park lands, has a wonderful downtown with diverse shopping, and an accessible and responsive government. The City is a world-renowned tourist destination located on the Monterey Peninsula in central California. Home to 3,722 residents, this one-square mile village in a forest by the sea is known for its natural beauty and rich artistic history.

The Library is a City Department and as such adheres to all City policies and procedures. The Library is governed by the Harrison Memorial Library Board of Trustees, appointed by the City Council, who approve the annual operating budget, approve and enforce library specific policies, have the oversight of both Library facilities, and make recommendations to the City Council regarding the Library when needed.

The Library has three funding sources: 1. The City of Carmel-by-the-Sea which funds staff salaries and building maintenance for both library buildings; 2. The Friends of Harrison Memorial Library which formed in 1971 and raises funds to support operations; and 3. The Carmel Public Library Foundation (“CPLF”) which was established in 1990 and provides for the majority of the Library’s operating budget and additional special projects from time to time. It is anticipated the funds for this project will be raised by the Carmel Public Library Foundation.

Library service in Carmel began in 1906, when the Carmel Free Library Association began lending books from a little redwood building. For a fee of one dollar per year, people could borrow any one of 500 books from the Association’s “Reading Room” heated by a wood burning stove. The Harrison Memorial Library building opened in 1928 and was designed by California architect Bernard Maybeck, built by local contractor M.J. Murphy, and financed by a bequest from Ella Reid Harrison as a memorial to her husband, California Supreme Court Justice Ralph Chandler Harrison. The library has had two additions: one in 1949, followed by another expansion in the 1970’s. In 1988 the Crocker Bank located on the corner of Mission Street and 6th Avenue, 3 blocks away from the Harrison Library was purchased by Mayor Clint Eastwood to serve as the Children’s Library and Local History repository.

In 2023 the City of Carmel-by-the-Sea engaged Jayson Architecture to prepare a Phase I conceptual design for

both library facilities, which has been reviewed by the Library Board of Trustees and City Council. Attachment 1
As part of this project there will be a first phase of conceptual design, during which time this conceptual design completed by Jayson Architecture will be revisited and reconsidered based upon new input from the City, the selected Architectural firm, and members of the community through public outreach. Project information and supporting documents can be viewed at ci.carmel.ca.us/harrison-memorial-library-board-trustees

This spring, at the direction of the City Council staff held two public workshops to ascertain how the community sees the library being used into the future to inform this Request for Proposals. While the first workshop held May 16 was not attended by any members of the public, the second workshop held May 23 was attended by a small group. One of the biggest themes was that attendees did not want the library to change; library users like its cozy traditional library atmosphere with books and comfy seating, the variety of programs, and the hub-role that the library plays for the community. The Architectural Firm that is awarded this contract will need to be incredibly adept at balancing historic preservation needs, exploring opportunities for innovative design to support efficient and imaginative library services, and integrating critical infrastructure upgrades, while ensuring that necessary changes happen gently and thoughtfully to balance infrastructure needs with community expectations.

IV. QUALIFICATIONS AND RELATED EXPERIENCE

The City is seeking Architectural services specializing in the preservation and rehabilitation of California's historic structures and fully versed in the Secretary of the Interior's Standards as well as, the State of California's Historical Building Code and their implications on individual projects. The selected firm will provide architectural restoration recommendations, and design plans while ensuring the integration of modern amenities without compromising the building's historical integrity. In addition the firm will have demonstrated, through its body of work, expertise in the restoration and seamless upgrading of historic buildings and a researched understanding of the region's built tradition.

Proposals will be considered only from Architectural firms who can demonstrate the following minimum qualifications:

1. Architectural firm is licensed to practice architecture in the State of California, and is able to effectively provide the required professional services.
2. The individual or individuals or sub-consultants who will be assigned the responsibility to projects shall have significant experience in design and construction consulting within the last five years in the State of California.
3. Proposer and staff shall be knowledgeable of all applicable building codes, American with Disabilities Act / Facilities
4. Experience in with building conservation, historic preservation, sustainability, and the interrelationship between older structures and community context.
5. Experience with design and construction consulting for public buildings.
6. Transition Plans, federal, state and local by-laws as applicable.
7. History of successfully managing other contracts with public or private agencies
8. Ability to meet any required timelines or other requirements.

V. SCOPE OF SERVICES

General Services. The Proposer will demonstrate that they can perform all architectural, engineering and project management related work necessary to prepare plans and specifications suitable for public works bidding to restore the historic Harrison Memorial Library, including:

1. A traditional approach to renovation during which the library is closed and services are relocated for the duration of construction; and
2. A phased approach to renovation that allows the library to remain open and operational during the project, with construction impacts minimized to the fullest extent.

Consultant services shall include, but are not limited to: project management, design development, bid documents, bidding support, and construction support services.

Architectural and engineering services shall consist of all items of work necessary for verification of building program, site planning, exterior schematic design, city review, design development, City development review, construction documents, plan submittal, contract documents, and construction administration for an approximately 7,300 square foot Library. The architect selected for this project will peer review a completed Phase I conceptual program and finalize the building program. The selected Architectural Firm will perform the following services which will include but is not limited to:

- Design Development
- Conceptual design
- Schematic design
- Mechanical Engineering and design
- Electrical Engineering and design
 - Provide design and coordination of Intermediate Distribution Frame (IDF)/Main Distribution Frame (MDF) which includes the following:
 - Electrical Diagram (include circuit panels, wiring specs, power distribution)
 - Low Voltage Diagram (fiber cables, CAT 6 cables, patch panels, conduits and/or cable trays, wireless access points, card key access panels, CCTV, IP based PA system)
 - Note that design team shall coordinate with City to document all elements necessary to make low voltage system a “turn-key” process
- Structural Engineering and design including Seismic Analysis (in coordination with the Public Works Department)
- Plumbing Engineering and design (in coordination with the Public Works Department)
- Utilities Design and Coordination
- Lighting Engineering
- Acoustical Engineering to mitigate excessive site noise
 - For sensitive spaces, room acoustics for community room, meeting and study rooms and the stack/study areas and HVAC noise and vibration for all spaces
- Security System design
- Hazardous Materials handling
- Artistic renderings
- Library consulting
- Interior Design Services including interior materials, finishes, and fixtures

- Audio Visual (A/V) system design including related electrical and data requirements
- Full Building Energy Modeling for LEED v4 & Title 24. Needs to meet Calgreen mandatory measures and LEED Gold w/ verification by LEED AP. This item is to be an optional service and should be included as such in the cost proposal.
- Signage consultant to design turnkey signage package for informational, directional, site, and fire and life safety signage.
- Management of all engineering and specialty consultants
- Construction cost estimation
- Preparation of Construction Documents for plan check submittal and bidding
- Construction administration and support
- Post-occupancy review and minor re-designs as needed

Project Management. The Architectural Firm will be the primary responsible party for managing the project's schedule and consultant contract budget. In addition, the Architectural Firm is expected to attend a monthly progress meeting and prepare action item logs for subsequent follow-up. The Architectural Firm is expected to maintain frequent and timely communication with City staff and the CPLF throughout the duration of the project.

All project schedules shall be prepared in Gantt chart format. Three weeks for each City review shall be included. Schedule updates shall be provided at all progress meetings. Architectural Firm's own team should have provisions for quality assurance/quality control over the work product prepared for the City. A statement of peer review will be required for overall constructability, coordination, and reasonable reduction in errors and omissions. The Architectural Firm is expected to communicate often and early with respect to the schedule and budget.

The Consultant team will complete the following tasks and meetings throughout the duration of the project.

- Bi-weekly project management conference call with the City (may be combined with another project meeting as appropriate)
- Monthly Progress in person Check-in with the City
- Progress Check Ins with key stakeholders at intervals appropriate to the development of the design (may be combined with another project meeting as appropriate, if not combined, maximum of 5 separate meetings)
- Meeting Documentation (Agenda and Minutes for any ABA led or facilitated project meeting)

Design Development. The Architectural Firm shall be the Engineer of Record and responsible for design and preparation of complete plans and technical specifications for the project. The Architectural Firm must perform an adequate field investigation to confirm existing conditions.

Because there already exists a conceptual design for the Library, there will be a first phase of conceptual design review, during which time this conceptual design will be revisited, reconsidered and revised, or replaced based upon new input from the clients, the selected firm, and members of the community through a public outreach effort. Links to the conceptual design materials and supporting documents are available at ci.carmel.ca.us/harrison-memorial-library-board-trustees

The selected Architectural Firm shall be responsible for working with City staff, the Library Board of Trustees, and the Carmel Public Library Foundation to facilitate the community outreach and participation process in coordination with the project manager and the City. To date the City has conducted minimal community

outreach. Most of these outreach efforts will take place during the conceptual design refinement and schematic design phases, but follow up during later phases will also be required. It is incredibly important that all members of the community have an opportunity for their voice to be heard.

All work is to be in compliance with all applicable rules, regulations, code, law, and good practice for public facilities. When possible, the Architectural Firm shall incorporate “green” building/construction practices, sustainability, energy efficiency, and low operations and maintenance costs into recommendations and subsequent design.

Use of contractors, and all applicable subcontractors which are required to pay prevailing wages, requires registration with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, potholing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. Specifications shall be prepared accordingly.

Plans and specifications shall provide sufficient detail to result in a good quality product while allowing competitive pricing where possible and appropriate and provide options to the contractor where appropriate to obtain the same good level of quality for the best bid price. Plans and specifications shall not specify proprietary products or services.

The City will facilitate (setup, lead, document outcomes) for all Core Team meetings. The Architectural Firm will attend a total of up to 3 Core Team meetings during design development and will incorporate comments and decisions from these meetings into the design.

The Architectural Firm will prepare for, facilitate, and document meeting(s) in which the City and Firm will:

- Review Design
- Review Pertinent Regulations
- Review Regulatory Approval Process & Requirements.
- Discuss any potential issues or concern with the following groups:
 - City Council
 - City Administrator’s Office
 - Harrison Memorial Library Board of Trustees
 - Carmel Public Library Foundation Board of Directors
 - Public Works Department
 - Community Planning and Building Department (as applicable)

Conceptual Design Refinement. The conceptual design phase shall include refinement of the pre-existing conceptual design prepared by Jayson Architects. During this phase, there will be additional public outreach and coordination with the clients, City, CPLF, and the City Council. A presentation to City Council will be required to get approval to proceed with the 30% design.

Links to the conceptual design materials are available at ci.carmel.ca.us/harrison-memorial-library-board-trustees

30% Submittal & Design Review. The Architectural Firm will submit the 30% complete Design Development Set of the proposed restoration and renovation of the Library for City and CPLF review, including hand drawn

renderings. The Architectural Firm will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The 30% submittal will be provided three weeks prior to the following core team meeting to review City Comments. The 30% submittal will include:

- Cover sheet and plan sheets with base mapping and preliminary details.
- Hand drawn renderings
- Cut sheets for equipment/appurtenances.
- Schematic Materials Palette
- Coordination of utilities
- Project schedule update
- 30% construction cost estimate
- Table of Contents list for technical specifications
- Water Efficiency design calculations
- Energy model
- Status of application for PG&E
- LEED checklist on track to meet LEED Gold (optional)
- Documentation of outreach with franchise utility companies for facilities needing to be relocated or adjusted to grade as a result of the proposed construction activities

Page Turn Meeting. The Architectural Firm will prepare for, facilitate, and document a Page Turn meeting in which we will review the 30% design submittal for the renovation of the Library. The Architectural Firm will present the design submittal including key features of the plans to project reviewers and answer questions and note any initial comments. The City and CPLF team will then review the plans and provide complete comments following the meeting.

Presentation. The Architectural Firm shall present the 30% plans to the Harrison Memorial Library Board of Trustees, Carmel Public Library Foundation Board of Directors, as well as the City Council for review. These meetings will be open to the public and feedback from the Boards/Council/Public will be received and incorporated in the design documents.

75% Submittal & Design Review. The Architectural Firm will submit the 75% complete Design Development Set of the renovation of the Library for City and CPLF Review, Plan Check, Constructability Review and Bid-Ability review. Consultant will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The RFP for the Harrison Memorial Library 75% submittal will be provided three weeks prior to the following core team meeting to review City Comments. The 75% submittal will include:

- 75% Plans with all subcontracted work accounted for in this submittal. All project details have been accounted for.
- 75% specifications including technical specifications and special provisions, with recommended changes in track changes format.
 - Bid schedule and item descriptions
 - A list of minimum required submittals during construction
 - List of information available to Bidders (provided by City)
 - A table listing all inspections (including any special inspections and materials testing) and associated responsibility
 - A table list of material warranties, and associated warranty periods
- Updated Materials Palette
- Project schedule update
- 75% construction cost estimate (bid schedule)

- Utility conflicts have been resolved or a timeline for resolution has been determined
- Responses to the City's 30% review comments
- New utilities
- LEED checklist (optional)

100% Submittal.

The Architectural Firm will submit the 100% complete Design Development Set of the restoration and renovation of the Library for City and CPLF Review, Plan Check, Constructability Review and Bid-Ability review. The Architectural Firm will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The 100% submittal will be provided three weeks prior to the following core team meeting to review City and CPLF comments. The 100% submittal will include:

- Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet. The professional shall sign, date and seal the following Certification of Peer Review on the plan set cover sheet with the transmittal of the final plans and specifications:
 - "The undersigned hereby maintains that a professional peer review of these plans and the required designs was conducted by me, a licensed Architect with expertise and experience in the appropriate fields of architecture equal to or greater than the Architect of Record, and that to the best of my knowledge and belief the appropriate corrections have been made."
- 100% specifications
- Reviewed bid instructions
- Finalized technical specifications
- Finalized Special Provisions
- Finalized Materials Palette
- Project schedule update
- 100% construction cost estimate
- Responses to the City's 75% review comments, along with return of mark ups
- New utilities
- LEED check list (optional)
- PG&E new service
- Prepare submittal for the City building department and obtain a building permit

The Architectural Firm will complete the following:

- 100% Design Construction Document Set
- Written Responses to City Comments
- Meeting Documentation

Submittal of Bid Package. The Architectural Firm will submit the Bid Package. The bid package will incorporate the City's final comments from the 100% submittal, including incorporation of all other team and stakeholder comments. The Bid Package submittal will include hard copies and digital format (PDF and native format) of each of the documents listed below:

- One hard copy full size set of drawings stamped and signed on each sheet by the Architect of Record and by discipline, as well as a PDF digital copy.
- Technical specifications, with cover sheet stamped and signed by all required disciplines in PDF format.
- Final project schedule update
- Final construction cost estimate

- Bid Package
- Drawings
- Technical Specifications
- Revised Special Provisions
- Construction Cost Estimate
- Written Responses to City Comments
- LEED checklist (optional)

Bid Services. The fourth phase, Bid Services, will support the bid process through the City's project manager (PM). During bidding, all communications will be directed through the City's PM. This phase will include:

- Architectural Firm attendance at a pre-bid meeting
- Response to all bidder's requests for information (RFIs)
- Support City's coordination efforts to inform plan-holders of significant responses to RFIs.
- Preparation of addenda as necessary. If addenda to bid documents are extensive and are because of the Architectural Firm's work product, conformed documents shall be prepared at no expense to the City. City will provide reproduction services.

Phase 4 Deliverables. The Architectural Firm will complete the following:

- Responses to Requests for Information
- Addenda
- Conformed Documents, if required

Construction Services. Construction Services will support project construction through the City or the City-hired Construction Management Firm. This phase will include:

- Attend and prepare information for a coordination meeting between the design team and the construction management team. The Architectural Firm shall be prepared to address:
 - Key Project Design Drivers
 - Possible construction pitfalls as it relates to meeting design intent
 - Items for the construction management team to be aware of (special working hours, shortened timelines for submittal reviews, etc.).
 - Attend the pre-construction meeting.
 - Attend approximately 10 periodic construction progress meetings, but quantity will be adjusted as appropriate to the schedule and pace of the work
 - Participate in the final walkthrough and development of punch lists.
 - Respond to RFIs, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
 - The consultant shall stamp and sign any revisions to the contract plans as a result of responses to RFIs or as a result of executed change orders. Consultant shall ensure that all changes are in compliance with the applicable codes and coordinate with DSA.
 - Review and respond to all submittals within the period allocated in the contract documents.
 - Review any proposed substitutions, if any, for conformance to plans and specifications.
 - Review and make recommendations on proposed changes to the contract (Request for Quotations and Contract Change Orders).
 - Prepare Record Drawings based upon red-lines provided by the contractor and field reviews. Final Record Drawings will be submitted electronically, in PDF and CAD format.
 - Participate in the "Lessons Learned Meeting" with all parties at the end of the project

Reimbursable Expenses and Markups. For preparation of the cost proposal template and invoicing during the project, no markups shall be allowed on reimbursable expenses and the maximum markup on each sub-consultant shall be 5%. Optional services, if any, may be included as separate line items in the cost proposal.

Construction Deliverables. The Architectural Firm will complete the following:

- Responses to Requests for Information
- Submittal Reviews
- Punch list
- LEED Checklist and corresponding letter by project LEED AP noting intent to achieve LEED Gold (Optional)
- As-Built Drawings
- Meeting Documentation

VI. SUBMITTAL REQUIREMENTS

Proposal Requirements. The proposal should include elements and be organized in the order presented below.

1. Transmittal or Cover Letter
 - a. To the attention of: Nova Romero, City Clerk, P.O. Box CC, Carmel-by-the-Sea, CA 93921
 - b. Signed by an officer of the prime consultant. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.
2. Acknowledgement of Addenda
 - a. If any addenda are issued, you must acknowledge your receipt of them either by including a statement in your transmittal letter or by returning signed addenda with the proposal.
3. Firm Profile and Project Team
 - a. Project Architect description.
 - b. The prime consultant and sub-consultants (if applicable) must be able to demonstrate expertise, experience, and the ability to provide the services and complete the tasks described in Section VI Scope of Services. The expertise and experience must include, but is not limited to, electrical, mechanical, and structural engineering, **library consultant(s)** and architectural services. Include a brief description of the prime consultant firm (firms) and sub-consultant team (if applicable), including number of employees and years in business.
 - c. Prime(s): Provide a detailed resume of the proposed principal-in-charge, the lead engineer, and any other parties that will be responsible for this project. The lead engineer shall be a full-time employee of the prime(s). Clearly identify each individual's relevant experience (former projects) with photos.
 - d. Sub-Consultants: Provide a detailed resume of the proposed project manager (PM), who shall be a full-time employee of each sub-consultant for this project, **including library consultant(s)**. Clearly identify the PM's relevant experience (former projects) with photos.
 - e. Confirm that the key project personnel identified by the prime consultant and sub-consultants shall not be substituted without approval of the City. The City must also approve any new, key team members.
 - f. A table of organization setting forth the project manager, supporting staff, and sub- consultants.
4. Relevant Experience – Prime Consultant and Sub-Consultants

- a. Describe experience in providing the necessary services for at least three (3) projects similar in size and scope to the individual projects listed in Section I.C. Project Description, with a minimum construction value of at least \$750,000 for each example project. For each project, provide the following information:
 - Client name, project name and location.
 - Description of project scope.
 - Month and year commenced and was (or will be) completed.
 - Project construction cost.
 - Contract amount.
 - Firm's project responsibility.
 - Names of key personnel involved in working on the projects.
 - Two (2) client references for each project, including contact names, addresses, and telephone numbers.
5. Project Approach, Organization, and Local Presence
 - a. With reference to Section I. Project Information of this RFP, present your approach and organization for providing services on these projects. Indicate your understanding of the critical project elements, **including library operations and functionality**, and what special approaches your team will feature to manage these elements.
6. Project Timeline and Schedule
 - a. Layout the proposed timeline of the project through completion of construction and post-construction occupancy review, including an alternative timeline that takes a phased approach to construction allowing the library to stay open during construction.
 - b. Describe the time schedule for each proposed task and subtask. Indicate proposed work periods, milestones, and proposed completion dates, as well as anticipated regular meeting periods
7. Additional Services
 - a. The consultant may propose any additional, optional services it believes would complement or augment the scope of services requested by this RFP. The City reserves the right to consider these additional, optional services in its evaluation of proposals and may, at its sole discretion, award additional, optional services to any proposer.
8. A summary of the consultant's understanding of the contract requirements as a whole and the unique capabilities to perform the services required.
9. An identification of any modifications to the attached Professional Consulting Services Agreement (APPENDIX A) the consultant would require prior to entering into an agreement with the City.

Cost Proposal and Hourly Billing Rates. The Architect shall provide a separate fee proposal for the requested services. The actual dollar fee paid to the Architect shall be fixed. The architect's cost proposal shall also include all fees to be paid to the Architect's consultants. In addition to the fixed fee for the project, the architect shall provide a schedule of hourly billing rates for the various levels of staff who may participate in the project, should the need for extra services arise. No additional markup will be allowed on fees quoted.

The cost proposal shall be submitted with the Proposal in a separate, sealed envelope marked "LIBRARY-COST PROPOSAL", with the architectural firm name. Payments to the architect shall be made on a monthly basis and shall be in proportion to services performed.

All prints and reproduction charges for documents used by Architect and their consultants for their "in house"

use are to be included in the contract price. Electronic copies of any prints are preferred for City check sets, progress sets and all plans required for City plan checks. If paper copies are needed they will be requested specifically by the City and will be considered reimbursable expenses. All reimbursable expenses shall require prior authorization from the City.

1. The prime consultant shall provide a cost proposal to accomplish each deliverable and phased task (per Section I.D. Scope of Services).
2. The prime consultant and sub-consultants shall provide a complete list of all staff hourly rates of the positions by name that would be invoiced, i.e., Principal, Lead Engineer, CAD drafter, Administrative Support, etc. Hourly rates shall be divided into base salary, fringe benefits, overhead, indirect cost surcharges, profit, consistent with Caltrans Local Assistance Procedures Manual for federally-funded A&E contracts.
3. The prime consultant shall self-perform at least 50% of its proposed contract amount.
4. The contract amount will be an actual cost-plus-fixed fee with a maximum not-to-exceed amount. During the contract term, there is no provision for hourly rate increases or adjustments. If an amendment to extend the contract expiration becomes necessary, hourly rate increases/adjustments will be permitted in accordance with Caltrans LAPM and applicable local ordinances.
5. The proposal shall show a lump sum cost estimate for each task identified with a breakdown. In addition, sub-consultants should be identified in the scope of work.
 - a. Provide cost estimates for each subtask by classifications, providing hourly billing rates for personnel, with the estimated total based on hourly estimates. The estimate shall include all clerical, administrative, and support functions.
 - b. The cost estimate shall include provisions for meeting with the agency to report progress of the work
6. The proposal will included cost estimates for both:
 - a. A traditional approach to renovation during which the library is closed and services are relocated for the duration of construction; and
 - b. A phased approach to renovation that allows the library to remain open and operational during the project, with construction impacts minimized to the fullest extent.

VII. INSTRUCTIONS FOR PROPOSAL

Format Of Envelope For Proposal. The Submitter shall deliver the proposal in a sealed envelope clearly marked on the outside: **"PROPOSAL FOR HARRISON MEMORIAL LIBRARY"** as well as the name of the proposer.

Quality Of Proposals. Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the core requirements set forth in this RFP.

Proposer's Signature / Cover Letter. An authorized representative of the Proposer shall sign the cover letter which identifies the legal name of the Proposer, along with name of contact person, address, phone number, and email address. The cover letter may also be supplemented by a brief narrative about why the proposer is interested in this opportunity.

Contents Of Proposal. In addition to the cover letter, the Proposer shall provide five sections in the following order: (A) Qualifications and Related Experience of Proposer, (B) Proposed Scope of Services, (C) Approach to

Architectural Services, (D) Project Timeline and Schedule, and (E) If applicable any additional proposed services not covered in this Request for Proposals. Proposals shall be no longer than 30 pages in length. Attachment 1

City's Review Of Proposals. After the proposals are received, an evaluation committee consisting of City staff, Library Board Trustees, Carmel Public Library Foundation representatives, and community stakeholders shall review all proposals for responsiveness to the RFP. In reviewing the proposals, the City will consider all elements identified in the Evaluation Criteria section shown below. Proposers who do not meet the evaluation criteria will be notified that they will not be advancing in the evaluation process.

Award Of Agreement. Upon completion of the review period, the City shall notify those Proposers who will be considered for further evaluation. All Proposers so notified shall meet with the City's designated Manager(s) to discuss entering into a Professional Services Agreement for architectural services for the renovation of the Harrison Memorial Library.

1. If the City determines, after further evaluation and negotiation, to award a Contract, a Contract shall be sent to the successful Proposer for the Proposer's signature. No proposal shall be binding upon the City until after the Agreement is signed by duly authorized representatives of both the Proposer and the City.
2. The City reserves the right to reject any or all proposals, and to waive any irregularity. The award of the Agreement, if made by the City, will be based upon a total review and analysis of each proposal.

Proposals Are Public Records. Each Proposer is hereby informed that, upon delivery of its proposal to the City, the proposal is the property of the City.

1. Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberative process in accordance with the procedures identified in this RFP. However, after the City either awards an agreement to a successful Proposer, or the City rejects all proposals, the City shall consider each proposal subject to the public disclosure requirements of the California Public Records Act (California Government Code Sections 6250, *et seq.*), unless there is a legal exception to public disclosure.
2. If a Proposer believes that any portion of its proposal is subject to a legal exception to public disclosure, the Proposer shall: (1) clearly mark the relevant portions of its proposal "Confidential"; and (2) upon request from the City, identify the legal basis for the exception from disclosure under the Public Records Act; and (3) defend, indemnify, and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the proposal.

VII. EVALUATION CRITERIA

The City is seeking comprehensive proposals addressing all sections identified. The maximum number of pages for the proposal, including cover letter, contents, resumes, and exhibits, shall not exceed 25 pages. Covers and tabs are not counted. The following criteria will be considered by the City:

1. Responsiveness to this RFP
2. Qualifications and related experience

- Attachment 1
3. Project Understanding – Understanding of the project requirements, familiarity with available construction methods, limitations and benefits and recognition of potential project challenges. **15**
 4. Construction Experience – Technical experience in performing work of a similar project scope and size. **15**
 5. Familiarity with Local Government Project Development Procedures **15**
 6. Demonstration of an understanding of public library operations and/or plan to include a library consultant as part of the team to ensure library operational needs are met post-construction **15**
 7. Problem Solving – Firm and project team's ability to problem solve construction issues effectively and to be situationally adaptable. **15**
 8. Approach to Communicating with the City/Local Presence – Ability to commit and maintain staff for the duration of the project for management, inspection, and testing. **10**
 9. Personnel Qualifications – Detailed list of qualifications of staff and consultants to be assigned to the project **10**
 10. Additional Services and Firm Flexibility – Firm's ability to provide additional services that may be a part of an individual project's conceptual, environmental, design, or construction management phase, using other resources available within the firm or its subconsultants. **5**
- TOTAL: 100**

Based on the recommendation of a committee composed of City representatives, Carmel Public Library Foundation representatives, and members of the public review of the response to the RFP's, the City will select firms to interview. Final selection will be based on the review of proposals, follow-up discussions with selected firms, and recommendations from past and current clients.

Final approval will be at the discretion of the City Council of Carmel-by-the-Sea. The City, with input from the CPLF, reserves the right to negotiate directly with only one (1) firm or discontinue this process at any time.

***TENTATIVE SCHEDULE - RFP #2024-25-001**
ARCHITECTURAL SERVICES CONTRACT
Harrison Memorial Library Restoration and Renovation

Date	Activity
TBD week of Jun 16, 2024	HMLBT Review of RFP
Monday, July 8, 2024	City Council Review of RFP
Wednesday, July 10, 2024	RFP released
Friday, July 23, 2024	Mandatory Walk-through
Friday, Aug 2, 2024	Questions from architects due
Friday, Aug 9, 2024	Answers to questions from City due
Friday, Aug 23, 2024	Proposals due - postmarked no later than 08/23
Week of Aug 26, 2024	Meet with and distribute proposals to review committee
Week of Sep 2, 2024	2nd meeting with review committee to select proposers for interviews
Week of Sep 16, 2024	Interviews with selected Architectural Firms
Week of Sep 23, 2024	Deliberations
Friday, Sep 27, 2024	Final selection
October 2024	Contract negotiations
Tuesday, Nov 5, 2024	City Council contract approval

*This schedule is subject to change. Proposers will be notified of any amendments to this schedule.

PROFESSIONAL SERVICES AGREEMENT

for the

**[Name of the Project and/or type of services
Agreement #]**

THIS AGREEMENT is executed this ____ day of _____, 202__, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and **[Name of Consultant]**, (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 provide to the City, as the scope of services ("Scope of Services") under this Agreement, the following: **[insert general description of the scope of work]**. The Scope of Services is attached hereto as Exhibit "A." The Scope of Services under this Agreement shall include, but is not limited to, a project description, project phases, task descriptions, identification of key personnel, identification of subconsultants, their key personnel and general description of services that will be performed, as further set forth in this Agreement and attachments hereto.

B. **Change Orders**. Agreements and Change Orders exceeding \$24,999 require City Council approval to be valid. The City may, from time to time, by written notice to Consultant, make changes to the Scope of Services as defined in Section 1.A above, and Consultant shall carry out the Services subject to such changes, within the time limits agreed to by the parties. The compensation and/or Project Schedule shall be increased or decreased by written Change Order to this Agreement ("Change Order"), signed by the City and Consultant, prior to commencement of any such changes of the Services. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by Council. The City shall not be liable to pay additional compensation to Consultant for any additional services performed without an executed Change Order issued prior to proceeding with amended services. All other terms of this Agreement shall apply to authorized Change Orders.

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, hourly fees as set forth in Consultant's Fee Schedule (Exhibit "B"), in a total amount not-to-exceed _____ Thousand ____ Hundred and ____ Dollars (\$____.00). Such compensation shall be considered the "Maximum Authorized Expenditure" under this Agreement. The Fee Schedule shall include, but is not limited to, fees for each phase and task, not-to-exceed total fee, hourly rates, reimbursable rates and subconsultant mark-up rates. 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 the written invoice have not 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 monthly written invoices to the City's Project Representative, identified in Section 5 herein. Invoices shall be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City shall provide invoicing format upon request. Consultant shall not bill the City for duplicate services performed by more than one person. Consultant's invoices shall include, but are not limited to, the following information:

- i. Project Title, the City's Purchase Order number and City's Project Code(s) for each project;
- ii. Invoice number and date;
- iii. A brief description of services performed for each project phase and/or task;
- iv. The budgeted amount for each phase, task and item, including the total amount, with the same for approved Change Orders, if any;
- v. Amount invoiced to date divided by the agreed total compensation, expressed as a percentage, with the same for approved Change Orders, if any;
- vi. The amount earned and invoiced to date for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- vii. The amount previously invoiced for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- viii. The amount due for the period covered by this invoice for each phase, task, and/or item, including the total amount, with the same for approved Change Orders, if any;
- ix. For time and materials authorizations, the number of hours spent, by whom and their hourly rate for each phase, task and/or item, including the total amount;
- x. The costs incurred, including reimbursables, for each phase, task, and/or item for the agreed total compensation and approved Change Orders, if any, along with a brief description of those costs;
- xi. The total amount due for the period covered by this invoice, including subconsultants and vendors of services or goods;

xii. Copies of subconsultant, vendor, and reimbursable invoices including hourly breakdowns when requested by City.

xiii. Copies of subconsultant and vendor lien releases.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement. Consultant shall submit invoices to the City on or before the sixteenth (16th) day of each month for services performed in the preceding month. 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.

The City shall not be obligated to pay Consultant a greater percentage of the Maximum Authorized Expenditure than the actual percentage of services completed as of the invoice date.

Consultant agrees to remit and 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. **Adjustment of Fees.** The City may increase or decrease the Maximum Authorized Expenditure by issuing a Change Order to the Agreement in accordance with Section 1.B “Change Orders” above. Should Consultant consider that any request or instruction from the City’s Project Representative constitutes a change in the scope of services, Consultant shall so advise the City’s Project Representative, in writing, within fourteen (14) calendar days of such request or instruction. Without said written advice within the time period specified, the City shall not be obligated to make any payment of additional compensation to Consultant.

D. **Hourly Rates.** Payment for all authorized services, including payment for authorized on-call, as-needed services, shall be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant’s Fee Schedule (Exhibit “B”).

E. **Subconsultants and Vendors.** Invoices for subconsultants and vendors of services or goods will be paid by the City to Consultant in accordance with the various rates as set forth in the Consultant’s Fee Schedule (Exhibit “B”). All reimbursable expenses shall be considered as included within the Maximum Authorized Expenditure. Consultant shall be solely responsible for payment to subconsultants and vendors of services or goods, and the City shall not be responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.

F. **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 and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.

iv. Consultant shall include the requirements of Section 2F, "Audit and Examination of Accounts", 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.

[INCLUDE THE FOLLOWING SECTION IF PSA IS FOR AN ON-CALL AGREEMENT OR CONTAINS OPTION FOR ON-CALL WORK]

G. **On-Call Agreements.** The amount of work (scope of services) to be requested during the Agreement term cannot be well defined at the outset. The Consultant agrees to perform the work on an on-call basis in such increments and at such times as defined in written work requirements issued by the City as the need arises. The Consultant agrees that the offer to perform the work at the various rates as set forth in the Consultant's Fee Schedule (Exhibit "B") remains in effect for all work requirements issued by the City during the Agreement term or until the exhaustion of the Agreement funding limit, whichever occurs first. The City does not guaranty a minimum dollar value of work.

3. AGREEMENT TERM

A. **Term.** The work under this Agreement shall commence by [start date of contract] and shall be completed by [end date of contract] unless sooner terminated or the City grants an extension of time in writing pursuant to the terms of this Agreement, except for provisions in this Agreement that shall survive the termination or completion of this Agreement. Consultant shall perform Change Order services as set out in Section 1.B, "Amendment of Services (Change Orders)", in a timely manner or in accordance with the agreed upon Change Order Project Schedule.

B. **Timely Work.** Consultant shall perform all Services in a timely fashion, as set forth more specifically in Section 3.A, "Term", and Section 3.C, "Project Schedule", of this Agreement. Failure to perform is hereby deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.

C. **Project Schedule.** Services shall be completed by Consultant in accordance with the Project Schedule attached hereto as Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant shall provide the Services pursuant to the Project Schedule or any applicable Project Schedule Change Order. If at any time Consultant discovers that the Project Schedule cannot be met, Consultant shall promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.

[THE FOLLOWING PARAGRAPH TO BE INCLUDED IF A PROJECT SCHEDULE IS NOT REQUIRED BUT SPECIFIC PROJECT DATES ARE KNOWN OR REQUIRED]

If a Project Schedule is not required, Consultant shall perform the Services under this Agreement in accordance with the following phase, task and/or milestone dates:

[List phase, task, milestone, funding, design, design review, construction and other deadline dates as applicable]

D. **Notice to Proceed**. Upon execution of this Agreement by both parties and the receipt of all documentation required by this Agreement to be provided by Consultant to the City, the City shall issue a written Notice to Proceed to the Consultant. The City may, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant shall diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant shall not proceed with any of the Services unless they have received a Notice to Proceed from the City.

4. **CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS**

A. **Listed Employees and Subconsultants**. Consultant shall perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "A".

B. **Substitution of Employees or Subconsultants:**

i. Consultant shall not substitute any key employee or subconsultant listed in Exhibit "A" without the prior written approval of the City, and such approval shall not be unreasonably withheld. The City shall not approve removal or substitution of employees or subconsultants for the reason that Consultant or its affiliates has called on such individuals to perform services for another client of the Consultant.

ii. If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant's employees or subconsultants, then Consultant shall, on written request from the City, replace such employee or subconsultant. Consultant shall, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.

iii. Regardless of whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City shall not be liable to pay additional compensation to Consultant for any replacement or substitution.

C. **Sub-agreements with Subconsultants**. Consultant shall incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of the Services necessary to preserve all rights of the City under this Agreement. Consultant shall be fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.

D. **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.

E. Independent Contractor:

i. 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.

ii. 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: _____
 Title: _____
 Address: _____
 Telephone: _____
 Email: _____

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: _____
 Title: _____
 Address: _____
 Telephone: _____
 Email: _____

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.

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 Indemnitee shall not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

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.

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.
- 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. Exception 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.

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 retentions ("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. Consultant warrants that Consultant and Consultant's agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.

B. Consultant, its agents, employees, and subconsultants shall perform all Services in a safe and skillful manner consistent with the highest standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant shall comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

C. Consultant shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

Attachment 1

D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City's Project Representative or his or her designee shall perform evaluation of the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

9. CITY INFORMATION AND RESOURCES

A. **Available Information.** The City shall make available to Consultant all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant shall be entitled to rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.

B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant shall not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Consultant be entitled to extra compensation for same.

C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services shall be and remain with Consultant.

10. OWNERSHIP AND USE OF MATERIALS

A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and shall remain the property of the City even though Consultant or another party may have physical possession of them or a portion thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.

C. **Delivery and Use of the Materials.** All Materials shall be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event

Consultant shall forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.

D. **Survival of Ownership and Use Provisions.** It is understood and agreed that the provisions contained in Section 10, Ownership and Use of Materials, shall survive the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

E. **Additional Copies.** If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant shall provide such additional copies, and the City shall compensate Consultant for the actual costs related to the production of such copies by Consultant.

11. 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.

12. CONFLICT OF INTEREST

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

In addition, 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 influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;

C. 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;

D. 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;

E. 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.

13. 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 City Administrator or designee, and the Consultant's Principal, 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 City Administrator 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.

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.

14. TERMINATION OF AGREEMENT

A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant or any subconsultant defaults or fails to deliver the Services in accordance with the terms and conditions of this Agreement. Such termination shall be in writing, shall set forth the effective date of termination, shall not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant, or any subconsultant:

- i. Fails to perform the required Services within the term and/or in the manner provided under this Agreement;
- ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
- iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
- iv. Fails to observe or comply with the City’s reasonable instructions;
- v. Breaches the Conflict of Interest provisions of this Agreement; or
- vi. Otherwise violates any provision of this Agreement.

B. **Termination for Convenience.** The City may, at its option, terminate this Agreement, in whole or in part, at any time during the Agreement Term for the convenience of the City.

C. **Steps after Termination:**

- i. Upon termination of this Agreement by the City for any reason, the City shall pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the

City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.

ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant shall:

a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and

b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.

iii. In the event this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

15. 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.

B. Venue for any such action relating to this Agreement shall be in Monterey County.

C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

16. 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, 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.

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 thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and shall prevail over any other provision of this Agreement in the event of inconsistency between them.

F. **Conflict between Agreement and Exhibits.** In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement shall take precedence.

G. **Counterparts.** 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.

H. **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.

I. **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.

J. **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.

K. **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.

L. **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.

M. **City Business License**. Prior to receiving a Notice to Proceed from the City, Consultant shall obtain and maintain a valid City of Carmel-by-the-Sea Business License for the duration of the Agreement. Costs associated with the license are the responsibility of Consultant.

N. **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

CONSULTANT

Mayor, City Administrator, or Designee Signature

Consultant Signature

Printed Name

Printed Name

Title

Title

Consultant Legal Company Name

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

[EDIT LIST OF ATTACHMENTS]

Exhibit "A"	Scope of Services, including Key Personnel
Exhibit "B"	Fee Schedule
Exhibit "C"	Project Schedule

EXHIBIT A



MEMBERS OF THE ARCHITECT SELECTION COMMITTEE

Marci Meaux – Co-Chair Architect Selection Committee, President, Carmel Public Library Foundation (CPLF)

Lacy Buck – Co-Chair Architect Selection Committee, Community Stakeholder, Founder of Henry Meade Local History Room and Co-Founder of The Gathering Place at the Harrison Memorial Library

Alexandra Fallon, CPLF Executive Director

Ashlee Wright, Library Director

John Krischer, Library Board Trustees, President, Ad Hoc Masterplan committee member

Phil Pardue, Library Board Trustee, Ad Hoc Masterplan committee member

Lettie Bennett, CPLF VP, Librarian, Former Carmel Public Library Assistant Library Director, Capital Campaign expertise

Dave Potter, Mayor, City of Carmel-by-the-Sea, Building expertise

Mary Smith, CPLF board member, Library historic restoration expertise, Library supporter

Cynthia McCoy, CPLF Past President, CPLF Finance Committee

Valera Lyles, Community Stakeholder, Library supporter

Mary McCary, Community Stakeholder, Designer, Library supporter

Carol Lee Holland, Community Stakeholder, Library Supporter

Ben Heinrich, CPLF Past President, Community Stakeholder, Realtor

Martha Drexler Lynn, CPLF Board Director, Art Historian, Library

Judie Profeta, Community Stakeholder, Historic homeowner, Realtor

Kent Seavey, Historian, Carmel architectural expert

Erik Dyar, Architect, Historic Resources Board Member (added at the request of Carmel City Council July 8, 2024)

Stephen Engblom, Consultant, Architect, Professor, Rice University & Berkeley School of Architecture (added at the request of Carmel City Council July 8, 2024)



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

August 6, 2024
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Evan Kort, Associate Planner

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: An update on development of the City's Accessory Dwelling Unit (ADU) Ordinance.

RECOMMENDATION:

Receive an update on development of the City's Accessory Dwelling Unit (ADU) Ordinance.

BACKGROUND/SUMMARY:

Beginning in 2019, California state legislature began passing a number of laws (Senate and Assembly Bills) reducing barriers to entry and streamlining the process for the establishment of Accessory Dwelling Units (ADUs) for all cities and counties in California. According to the Department of Housing and Community Development (HCD) July 2022 ADU Handbook ("ADU Handbook"), there have been eight bills in respect to ADUs passed, primarily codified in Government Code sections 65852.2, with one additional bill passed since the publication of the handbook -bringing the total to nine bills passed since 2019 to-date. Additional legislation has been passed since the publication of the a ADU Handbook.

In short, Government Code sections 65852.2 ("ADU Statute" or "Statute") requires that a permit application for the establishment of an ADU shall be considered ministerially without discretionary review or a hearing. Further, the statue states that a local agency may, by ordinance, establish objective development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit. However, these standards cannot preclude the creation of either an attached or detached ADU that is at least 800 square feet and at least 16 feet tall for a detached unit, or no taller than the primary dwelling (up to the maximum height for the zoning district) for an attached unit. This provision goes as far as to say that floor area and building coverage should not be take into consideration, or a waiver should be granted if an ADU within these parameters could otherwise not be established.

Notably, the statute also states (Government Code Section 65852.2(l)) (emphasis added with underline):

Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

HCD's July 2022 ADU handbook states: *"ADU laws apply to jurisdictions in the California Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (I).) Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws."*

On January 21, 2022, the California Coastal Commission (CCC) published a memo which discusses the authority that the Coastal Act grants the Commission and local governments over housing in the coastal zone, new legislation regarding ADUs, and how local governments can streamline ADU applications under the Coastal Act. The memo also encourages local governments to update their LCPs with J/ADU provisions in a manner that harmonizes the State's housing laws with the Coastal Act. Doing so would protect the State's coastal resources while also reducing barriers to constructing J/ADUs and helping to promote more affordable coastal housing. The memo also re-enforced that the state statute "explicitly recognize that local governments must still abide by the requirements of the Coastal Act, and by extension, Local Coastal Programs (LCPs)."

STAFF ANALYSIS

The Community Planning and Building Department has been tasked with updating the City's Accessory Dwelling Unit (ADU) Ordinance. The goal of the ordinance is to align the existing ordinance (CMC 17.08.050.G), with new and updated state legislation which has been passed since the original adoption of the City's ordinance.

While the ADU statute requires that local jurisdictions provide for streamlined and ministerial approvals of ADUs including the granting of certain waivers and exceptions for their development, the city's LCP conflicts with the requirements and current mandates of the state law both in terms of process and required development standards. The ordinance that is currently in process aims to harmonize the goals of the Coastal Act with the goals of the ADU statute.

On September 14, 2023, Planning Department staff met with California Coastal Commission staff to discuss the relationship between the City's Local Coastal Program (LCP) and the processing of ADUs to ensure the ordinance takes the correct approach with regard to the required LCP amendment. The Coastal Commission gave general direction to provide evidence and findings as to how any deviations from the state statute would be necessary to maintain consistency with the city's LCP and the Coastal Act. With this understanding, the first draft of the ADU ordinance was completed, and a workshop on the draft was scheduled with the Planning Commission.

On November 15, 2023, the workshop was held with the Planning Commission to review the first draft of the ordinance to allow the Commission and the public to provide feedback on the ordinance on the draft. Feedback to staff included, for example:

- Direction to explore opportunities to allow for additional floor area above what is prescribed in the Land Use Plan while still maintaining adequate open space on parcels;
 - For example, **General Plan/Land Use Plan Policy PI-49** States: *Limit above-grade floor area on 4,000 square foot lots to a maximum of 1,800 square feet. Projects with less above-grade square footage shall be preferred. Structural coverage shall not exceed 45% of the site. Total site coverage (structural and other impermeable coverage) on 4,000 square foot lots shall not exceed 55% of the site. Locate open space so that it visually links with adjacent properties. (LUP)*

This policy is related to Section 30253 of the Coastal Act, as described by Coastal Commission Staff in a Coastal Commission Staff Report for when the city's Local Coastal Program was under consideration for certification, however, the Planning Commission found that strict adherence to the current policy may discourage development of ADUs and directed staff to explore additional options to allow for some amount of additional floor area specific for ADUs.

The PowerPoint presentation from the Planning Commission meeting is included as Attachment 1 and the view of the November 15, 2023 workshop has been linked as well ([CLICK HERE FOR VIDEO](#)).

Following the meeting with the Planning Commission, staff has met with Department of Housing and Community Development (HCD) staff to understand their position as to how potential conflicts with the City's LCP may impact the development of the ordinance.

On February 1, 2024, Planning Staff and HCD staff met to discuss the progress of the draft ordinance including the meetings with the Coastal Commission staff, and the Planning Commission workshop. Following the meeting, HCD staff provided feedback, clarification, and direction to planning staff regarding the City's next steps in implementing and updating the ordinance. HCD staff specifically requested that any deviations from the State statute be compliant with the Coastal Act.

Staff has been researching and preparing a response to HCD which will provide evidence that the proposed ordinance cannot directly align with the statute because it must comply with the City's LCP and the Coastal Act. Areas in which deviations from the statute related to the development of an ADU may be needed for compliance with the Coastal Act include:

- Floor Area, coverage, and open space;
- Setbacks;
- Parking;
- Design Review;
- Tree Removal/Protection;
- Historic and Cultural Resources.

Next Steps

With the feedback received from HCD based on the initial review, as well as the Planning Commission and the public at the workshop, staff is revising the draft ordinance to respond to comments and feedback. Staff is also working to prepare additional findings to support deviations from the State statute where necessary for compliance with the City's LCP and the Coastal Act, while aligning with the goals of the of the ADU statute.

Once the revisions are complete, staff anticipates reconvening with the Coastal Commission and HCD to receive feedback and concurrence on the modifications. Staff will take forward a revised draft ordinance to the Planning Commission for an optional second review/workshop, or for a hearing for formal recommendation to the City Council. Following a recommendation from the Planning Commission, adoption of the ordinance would require a first and second reading by the City Council and certification by the Coastal Commission. The City must submit a copy of the adopted ordinance to HCD within 60 days after adoption of the ordinance and HCD may review and submit written findings to the City as to whether the ordinance complies with State ADU Law. A second reading of the ordinance would be likely by the end of calendar year 2024, and scheduling on the Coastal Commission's agenda would follow shortly thereafter.

FISCAL IMPACT:

None.

PRIOR CITY COUNCIL ACTION:

The City Council has included updating the ADU Ordinance to their strategic priority list.

ATTACHMENTS:

Attachment 1) ADU Workshop Presentation



CITY OF CARMEL-BY-THE-SEA

Accessory Dwelling Unit (ADU) Workshop

Planning Commission Special Meeting
November 15, 2023



Background

Workshop Purpose

- Gather early feedback on a draft ADU ordinance
 - Overall format and usability
 - High level policy direction
 - Design Standards
 - Additional feedback
 - Workshop
- No decisions or formal recommendations are being made at this meeting





What is an ADU?

An ADU is...

- “An attached or a detached residential dwelling unit that provides **complete independent living facilities** for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include **permanent provisions for living, sleeping, eating, cooking, and sanitation** on the same parcel as the single-family or multifamily dwelling is or will be situated.”
 - aka second unit, in-law unit or granny flat
 - Effectively a second unit or apartment on a parcel.
- ADUs can be constructed new or converted from existing space, and come in many varieties:
 - Detached structure
 - Attached to the main house
 - Conversion of existing accessory structure (e.g. garage conversion)
 - Conversion of existing space within the main house





What is an ADU not?

An ADU is not...

- A dwellings licensed by the DMV:
 - A tiny home;
 - A Recreational Vehicle.

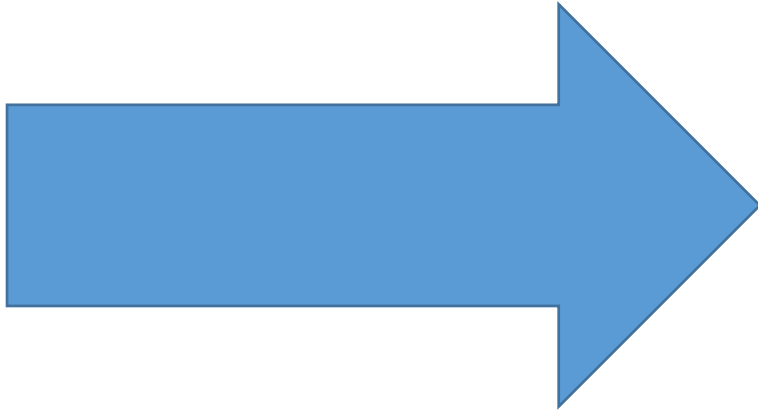


Manufactured homes meeting the requirements of Health and Safety Code Section 18007 are considered ADUs.



Legislative Background

- 2017
 - SB 229
 - SB 1069
- 2019
 - SB 13
 - AB 68
 - AB 881
 - AB 587
 - AB 670
 - AB 671
- 2020
 - AB 3182
- 2021
 - AB 345
- 2022
 - SB 897
 - AB 2221
- 2023
 - AB 1033
 - AB 976
 - AB 1332



State law(s) pertaining to ADUs



Process

Primary Sources

- Government Code Section 65852.2 & 65852.22
 - ADU & JADU development regulations
- CA Housing & Community Dev. ADU Handbook – July 2022
- Coastal Commission Memo – January 2022
- Carmel-by-the-Sea Planning Doc.
 - General Plan/Land Use Plan/Zoning Code

Secondary Sources

- Preliminary Meeting with Coastal Commission
 - Still need to meet with HCD
- Coastal cities adopted ADU Ordinances
- Non-Coastal cities adopted ADU Ordinances



Carmel-by-the-Sea LCP

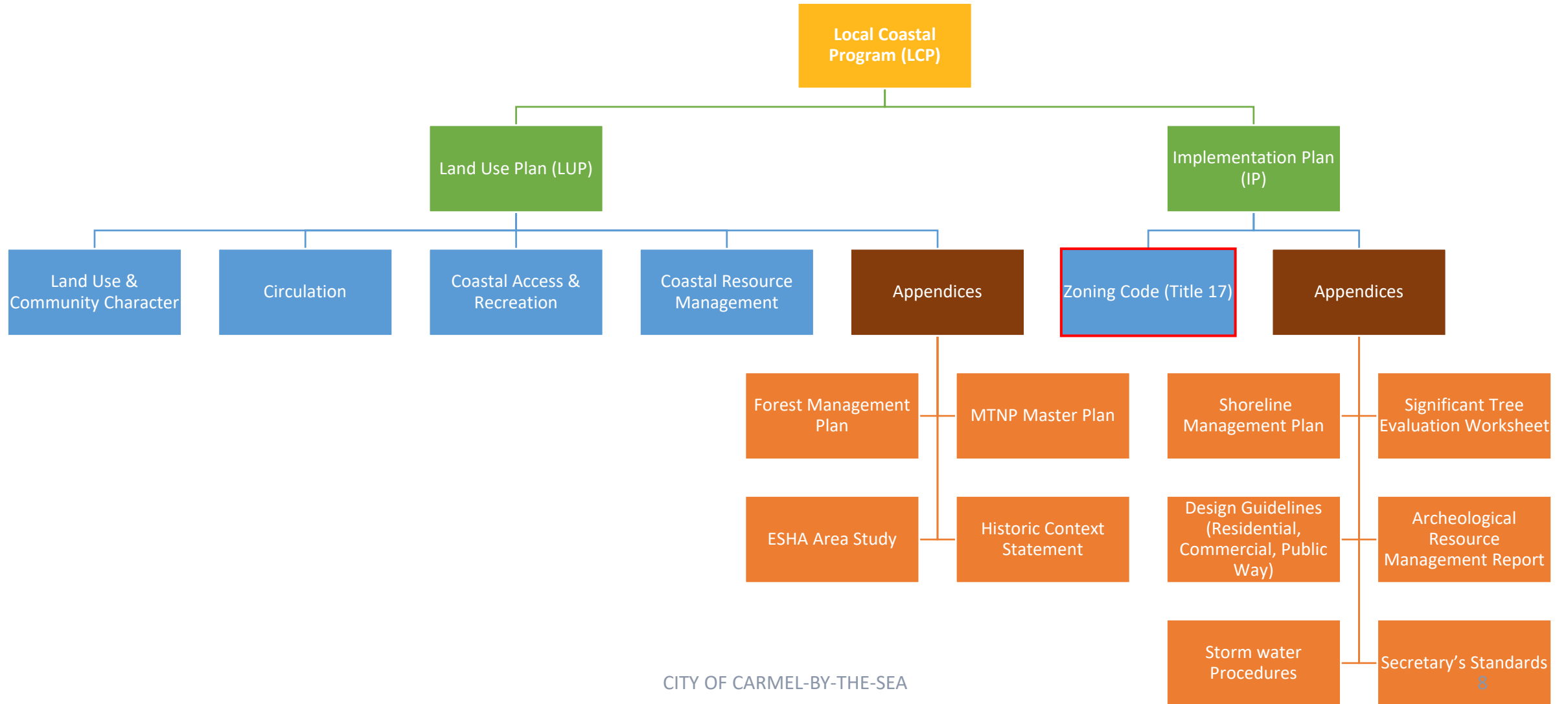
Do the new ADU laws apply to jurisdictions located in the California Coastal Zone?

- **Yes, however....**

- *From State ADU Handbook:*
 - *ADU laws do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies*
 - *Where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws.*
- *From Coastal Commission Memo:*
 - *Coastal Commission strongly encourages local governments to update their LCPs with J/ADU provisions in a manner that harmonizes the State's housing laws with the Coastal Act*
- *From ADU Law:*
 - **Gov. Code, § 65852.22, subd. (I):** *Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976, except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.*



Carmel-by-the-Sea LCP





Ordinance Overview – Development Standards

Single-Family - Proposed Ord.

- Max 1 ADU and 1 JADU per lot
- ADU may be attached, detached or located within the primary dwelling, or converted from an existing accessory structure
- Floor Area: Underlying Zoning
- Height and setbacks: Underlying Zoning
 - Some exceptions for height (increased to 16' from 15')
 - Composite setback waived for detached.
- Parking: No Parking required except in "Coastal Access Parking Area"
 - Parking required by Coastal Commission

Current Procedures

- Max 1 ADU and 1 JADU per lot
- ADU may be attached, detached or located within the primary dwelling, or converted from an existing accessory structure
- Floor Area: Up to 800 sf exempt from floor area requirements
- Height and setbacks:
 - Height varies; 16' typical
 - Setbacks varies; 4' typical
- Parking: None required



Ordinance Overview – Development Standards

Multi-Family/Commercial

- Up to 25% of existing multi-family units, and up to 2 detached units
- Converted from the portion of existing multi-family dwelling that are not used as livable space (storage rooms, passageways, attics, basements), or detached.
- Counts as floor area
- Height limit: 16' – 18'
- Setbacks: underlying zoning
- No Parking required except in “Coastal Access Parking Area”
 - Parking required by Coastal Commission

Current Procedures

- No proposals for Multi-Family ADUs
- Draft Ordinance codifies what is allowed by-right per state law.



Ordinance Overview – Process

- Ministerial process for ADU/JADUs that do not require a Coastal Development Permit (CDP)
 - Building Permit Only
- Created a streamlined administrative review for all ADU/JADUs requiring a CDP
 - Staff level review; all public hearings waived regardless of square footage of ADU
 - Objective Design Standards
 - Historic/Archeological/Biological Review may still be required (if in overlay/historic resource)
- 60 day approval for ministerial permits (from submittal of complete application); 60 day approval to the greatest extent feasible for CDPs.
- Voluntary Discretionary Review Track
 - Request for exception from prohibited design features (considered under “Design Guidelines” as opposed to “Design Standards”)
 - Request for concurrent processing with other improvements.



Ordinance Structure

Ordinance Outline

- Purpose, Intent and Findings.
- Applicable Zoning Districts.
- Development Standards for ADUs of Single Family Properties.
- Development Standards for ADUs of Multi-Family Properties.
- Junior Accessory Dwelling Units
- Design Review.
- Accessory Dwelling Units, General.
- Application and Review Procedure.
- Definitions.



Ordinance Structure: Examples

17.ADU.030 Development Standards for ADUs on Single Family Properties.

- A. Location – Single Family.
- B. Floor Area – Single Family.
- C. Unit Size – Single Family.
- D. Height Limits – Single Family.
- E. Setbacks – Single Family.
- F. Parking – Single Family.
- G. Design Review – Single Family.



Ordinance Structure: Examples

17.ADU.030 Development Standards for ADUs on Single Family Properties.

The following standards apply to ADUs and JADUs developed on all properties within the single family (R-1) zoning district, or any district developed with an existing or proposed single family dwelling.

A. Location – Single Family.

1. Number of ADUs. A maximum of one (1) ADU, and one (1) JADU shall be allowed on a single-family property.

a. JADUs may be allowed consistent with section 17.ADU.050.

2. Location on site. An ADU may be attached, detached, or located within the primary dwelling on the same lot. An ADU may be converted from a garage or other existing accessory structure.

17.ADU.040 Development Standards for ADUs on Multi-Family Properties.

The following standards apply to ADUs and JADUs developed on multi-family residential properties or mixed-used developments at any density:

A. Location – Multi-Family.

1. Number of ADUs. For all existing multi-family or mixed-use developments, both subsections (a) and (b) below shall apply.

- a. ADUs contained within the portion of existing multi-family dwelling structures that are not used as livable space:
 - i. The equivalent number of twenty-five (25%) percent of the existing multi-family dwelling units (no less than one (1) unit).

5

- b. ADUs detached from existing or proposed multi-family dwelling structures (The provisions of this subsection shall apply to a newly-constructed ADU that is detached from an existing multi-family dwelling structure and all accessory structures including, without limitation, garages and storage areas on the same site):

- i. Up to two (2) ADUs

2. Location on site.

- a. ADUs may be located within the portion of existing multi-family dwelling structures that are not used as livable space including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
 - i. In mixed-use buildings, the non-livable space used to create an ADU or ADUs shall be limited to the residential areas of a mixed-use development, and not the areas used for commercial or other activities. The parking and storage areas for these non-residential uses shall also be excluded from potential ADU development.
- b. ADUs may be detached from an existing or proposed multi-family dwelling structure and all accessory structures including, without limitation, garages and storage areas on the same site



Ordinance Structure



Ordinance Outline

- Purpose, Intent and Findings.
- Applicable Zoning Districts.
- Development Standards for ADUs of Single Family Properties.
- Development Standards for ADUs of Multi-Family Properties.
- Junior Accessory Dwelling Units
- Design Review.
- Accessory Dwelling Units, General.
- Application and Review Procedure.
- Definitions.

Requested Feedback

The ordinance is generally organized into ADU regulations on “single-family properties,” “multi-family properties,” and “JADUs”. How does the Commission feel about this approach?



Policy Discussion/Questions Summary

Previous Planning Commission meetings/discussions:

- Concerns regarding total floor area/size of units,
- Timing of approval relative to the single-family residence,
- Inter-accessibility with the main house, and
- Design standards.



Policy Discussion/Questions

Concerns regarding total floor area/size of units:

Draft Ordinance

CMC 17.ADU.030.B.1

Floor area of an Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit is included in the total floor area of the site

Land Use Plan/General Plan Policy

P1-49 Limit above-grade floor area on 4,000 square foot lots to a maximum of 1,800 square feet. Projects with less above-grade square footage shall be preferred. Structural coverage shall not exceed 45% of the site. Total site coverage (structural and other impermeable coverage) on 4,000 square foot lots shall not exceed 55% of the site. Locate open space so that it visually links with adjacent properties. (LUP)

Current Practice:

800 square feet of floor area exempt.



Policy Discussion/Questions

Timing of approval relative to the single-family residence:

Draft Ordinance

CMC 17.ADU.030.B.3

- The floor area of an existing ADU shall be counted in the calculation of the property's total floor area ratio.

CMC 17.ADU.080.B.1

- The city may delay acting on the permit application for the ADU until the permitting agency acts on the permit application to create the new single-family dwelling

Design Standards

- Standards TBD – but will be required to match **existing** or (concurrently) proposed dwelling

Current Practice:

No regulation in respect to timing of application.

City has begun to implement requirement outlined in CMC 17.ADU.030.B.3 based on new interpretation on state law.



Policy Discussion/Questions

Inter-accessibility with the main house

Draft Ordinance

CMC 17.ADU.070.P.2

Inter-accessibility prohibition codified.

Current Practice:

No change to current practice, just codified.



Policy Discussion/Questions

Parking

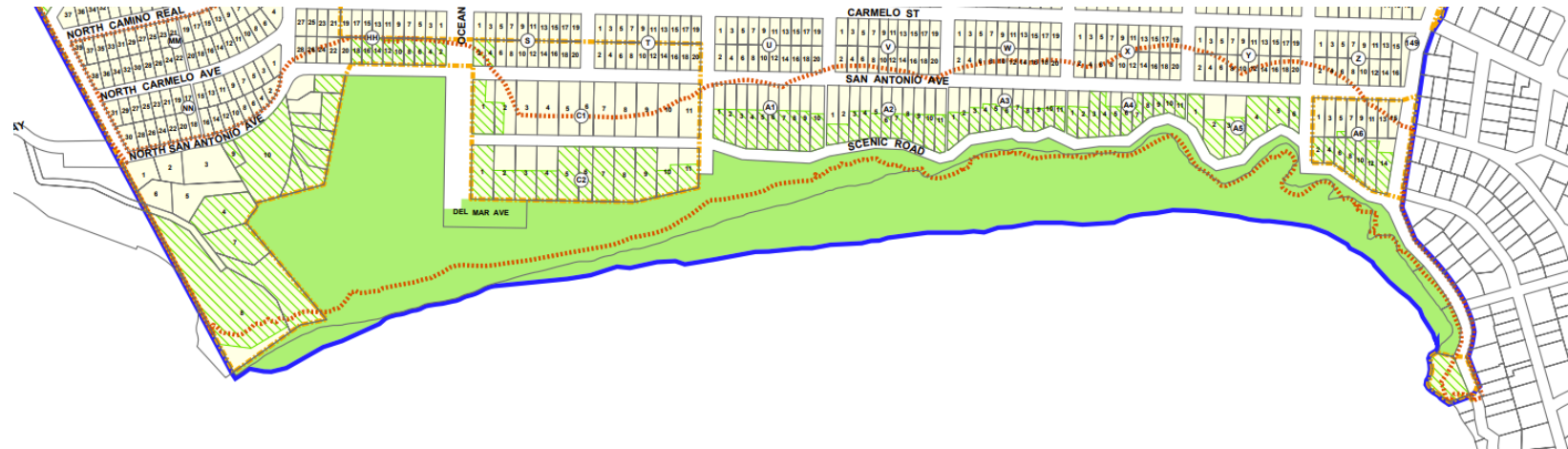
- Primarily Waived for most of city
 - Staff recommendation
- Replacement Parking not required if garage demolished or converted
 - Option to replace with permeable parking pad
- Coastal Commission Requirement*
 - Coastal Act objectives and policies to protect and provide maximum coastal access opportunities sufficient public coastal parking.
 - Local governments are encouraged to work with Commission staff to identify or map specific neighborhoods and locations where there is high visitor demand for public on-street parking needed for coastal access

Current Practice:

No parking required for ADUs

*Coastal Access Parking Area

- All properties located within the Beach and Riparian (BR) Overlay District located west of Carmelo Street and west of North San Antonio Street
- All properties with street frontages located on San Antonio Avenue or North San Antonio Avenue.
- Parking Requirements
 - 1 space per ADU
 - replacement parking required for primary dwelling if garage converted or demolished





Design Standards

Draft Ordinance

17.ADU.060 Design Review.

- PC to adopt objective Design Standards
- Prior to adoption/absence of standards
 - The accessory dwelling shall match the appearance of the primary dwelling

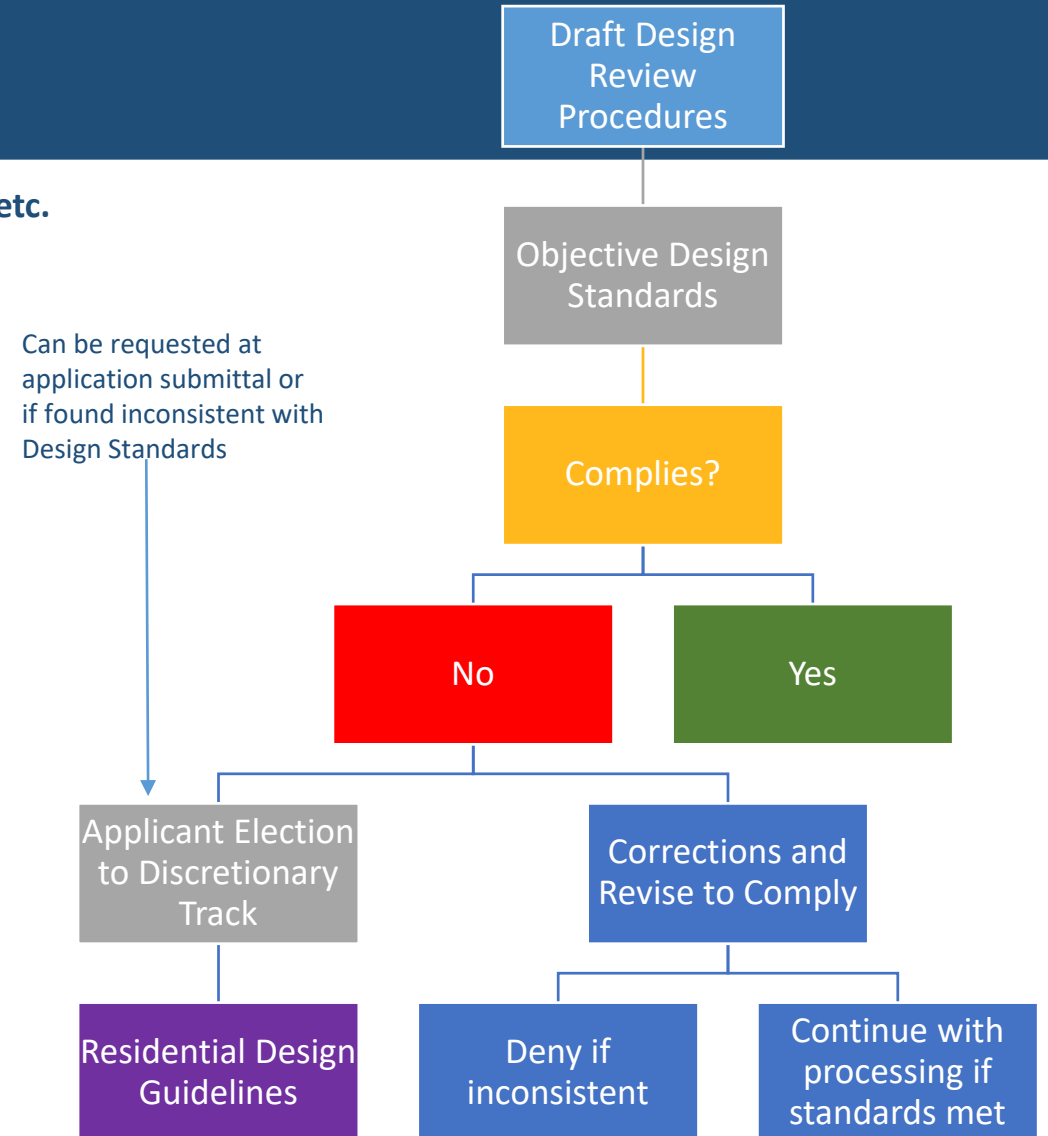


Design Standards

Develop a Yes/No checklist to review materials, finishes, site design, privacy, mass/bulk, etc.

Drafts concepts:

- **Windows.**
 - Locations:
 - Windows located in portions of an ADU where there finished floor level of an ADU is five or more feet above the existing or finished grade, whichever is more restrictive, shall:
 - Have a sill height of no less than six feet above the finished floor adjacent to the window, or
 - Have a permanent opaque glazing.
 - Design and Materials:
 - No new window shall be greater than 12 square feet in area.
 - Materials and finishes for all attached, detached, and conversion ADUs where new windows are proposed shall match the material and appearance of the existing or proposed primary dwelling. If the primary dwelling consists of multiple window styles or materials, the following shall be used in determining the appropriate window style and material:
 - Criteria TBD
 - Specialty Windows
 - One bay or oriel window not exceeding 24 square feet in area may be allowed provided it does not face directly onto the street, and complies with the applicable requirements of section (A)(2) in addition to the applicable requirements of the municipal code.





Design Standards

Source: City of South Pasadena Design Guidelines for ADU Development on Historic Properties

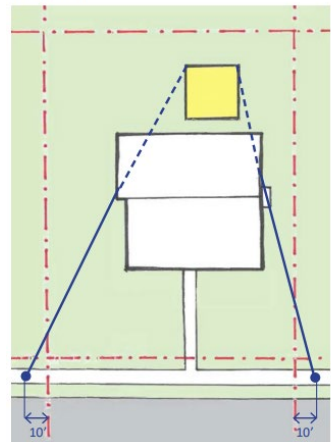
Visibility

Visibility from the Public Right-of-Way

For the purposes of the ADUs Design Standards and Design Guidelines for Historic Properties, visibility from the public right-of-way means the following:

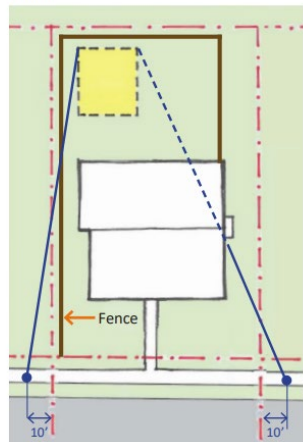
- Visibility of the structure from the street immediately in front of and within 10 feet on either side of any street-adjacent property line(s). This includes both adjacent streets for corner properties. Alleys are not considered public right-of-way for this purpose.
- Vegetation, gates, fencing, and any other landscaping elements shall not be considered in determining visibility from the public right-of-way.

Not Visible



This ADU is not visible from the public right-of-way immediately in front of and within 10 feet of the side property lines.

Visible



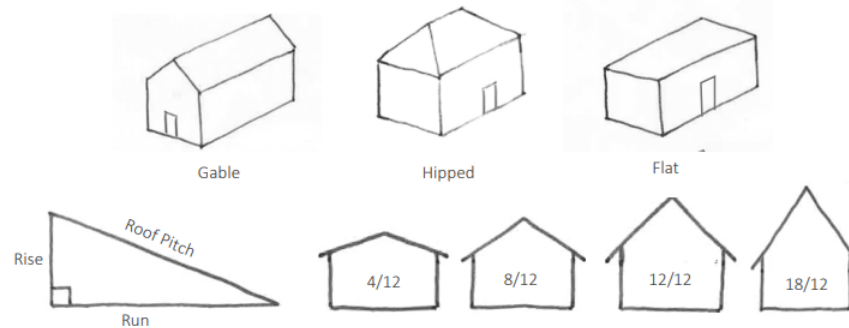
This ADU is visible from the public right-of-way on the left side of the dwelling. Note that fences, gates, vegetation, and any other landscaping elements shall not be considered in determining visibility from the public right-of-way.

Design Elements

Roofs and Wall Cladding

Roofs

- The ADU roof type must match the roof type of the primary dwelling or existing accessory structure (if attached to the accessory structure). The roof pitch must be similar to the primary dwelling/accessory structure and within the roof pitch range that is appropriate for the architectural style of the dwelling/structure. Refer to Chapter 4 for information on acceptable roof pitches by style. Following are the roof types and pitches most commonly found on South Pasadena's historic residential properties.



- In most instances, the ADU roof material should match the primary dwelling/accessory structure. Exceptions include the following:
 - Composition shingle roofing is an acceptable alternative to wood shingle.
 - Cement tile roofing is an acceptable alternative to clay tile.
 - Solar shingle roofing is an acceptable alternative to asphalt composition or wood shingle roofing.
- Vinyl tiles and cement shakes are prohibited.

Design Elements

Doors

Doors

- ADU doors must be made of the same or similar materials as those of the primary dwelling or the existing accessory structure (if attached to the accessory structure).
 - Wood-clad, clad-wood, and composite wood doors are acceptable.
- Doors may or may not incorporate glazing. While simple paneling is acceptable, avoid any highly decorative design elements applied to or carved into the door or glazing.
- Garage doors may be replaced with new doors or infilled, provided that the framing to the original opening is preserved.



Paneled wood door



Paneled wood door with glazing



Existing (non-historic) garage doors on accessory structure



ADU conversion with French door infill retaining original garage door opening



Policy Discussion/Questions



Other Policy Questions

- Owner occupancy?
 - Property owner would need to live in the primary dwelling or ADU.
 - Currently cannot be imposed but can be enforced starting in 2025.
- Deed Restrictions?
 - Already required for JADUs (per state law).
 - Should similar requirement be required for ADUs?
 - Could include:
 - A restriction on the size and attributes of the unit that conforms with this ordinance;
 - Prohibition on the sale of the unit (except as allowed by state law);
 - Owner occupancy requirement (see above).
- How should view impacts be addressed? Should view impacts be addressed?
 - Is FAR/Height limitations enough of a control?
 - Through Design Standards?
 - Some other mechanism as part of application?

Requested Feedback

Are there other policy items that should be discussed, considered, or evaluated?

What are the important Design Review Criteria and Elements to be considered?



Commissioner's Questions – 1 of 3

- **What are Section 65852.2 and 65852.22 of the Government Code?**
 - Section 65852.2 = State Legislature pertaining to ADU Development
 - Section 65852.22 = State Legislature pertaining to JADU Development
- **The term “allowable density” is not defined in Definitions. Does it have a definition?**
 - CMC 17.70 Base Density. The number of dwelling units on a particular parcel of land that is in conformance with the general plan and zoning code.
- **Just to clarify that a single family property may have an ADU and a JADU?**
 - Yes, single-family properties may have one ADU and one JADU.
- **Height Limits – what is the rationale for the 16’ and 12’ maximums?**
 - 16’ = minimum height prescribed in state law
 - 12’ = one-story plate height from R-1 Zone District (objective standard)



Commissioner's Questions – 2 of 3

- Multi-Family... 25% of the existing multi family dwelling units – that seems about right to me. If there are 8, you can add up two more. Similarly on page 6 (top of page) the limit of 2 ADU's seems about right.
 - **How does space defined as "not used as livable space" factor into this?**
 - That is the portion of a multi-family building that is allowed to be converted to an ADU as outlined in the state law. Staff's understanding is that it is intended to not interfere with existing dwelling units.
 - **But what if a specific property clearly has the capacity for more than these limits? Would that be a variance granted by the Planning Commission?**
 - The property owner can apply to add the additional units through the standard Planning process. Depending on the density, affordability requirements may be required.
- **Design Review. Will these design standards need to be Objective?**
 - Yes, while the city has some leeway due to our LCP, the adoption/creation of objective design standards would be a reasonable LCP update to harmonize with state ADU law to expedite the review process.
- **Is the 60 day approval required by the State?**
 - Yes



Commissioner's Questions – 3 of 3

- **When will an ADU application come to the PC?**
 - There is no change to how ADUs are currently reviewed/processed. Only clarification/codification regarding the staff approval process.
 - The new exception is if the applicant requests the discretionary review track.
- **How will Staff detect that the applicant intends to remodel the primary dwelling after the ADU application is approved?**
 - Staff would only know if this information is disclosed or shown on the plans. There is no change to how applications are processed.
 - This is intended to prevent ADUs being constructed ahead of new dwellings.
 - ADUs built prior to a new dwelling would need to match the **existing dwelling's** materials, finishes, etc

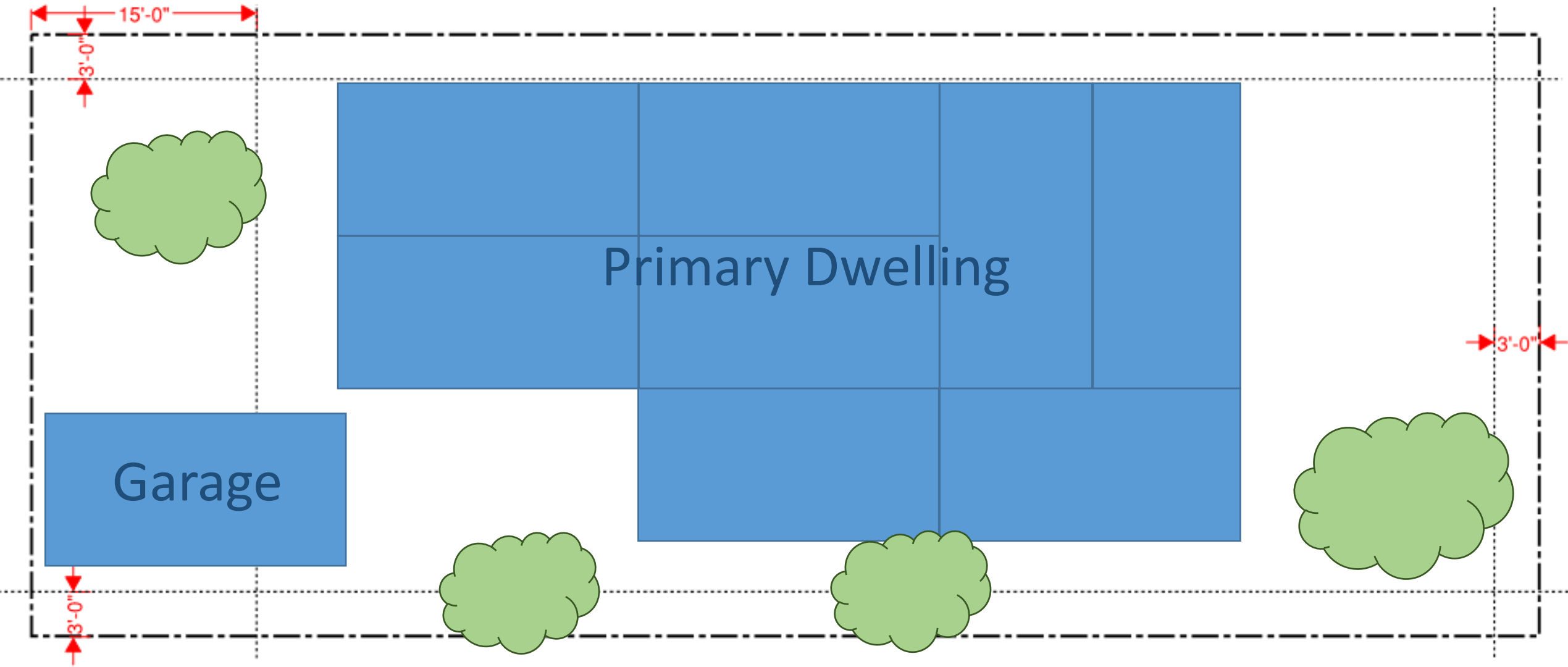


Next Steps

- Receive Feedback and Workshop
- Revise ordinance and develop design standards
 - Draft Supplemental Documents:
 - ADU Specific Application
 - Submittal Checklist
 - Technical/Guidance Manual
- Return to PC/CC

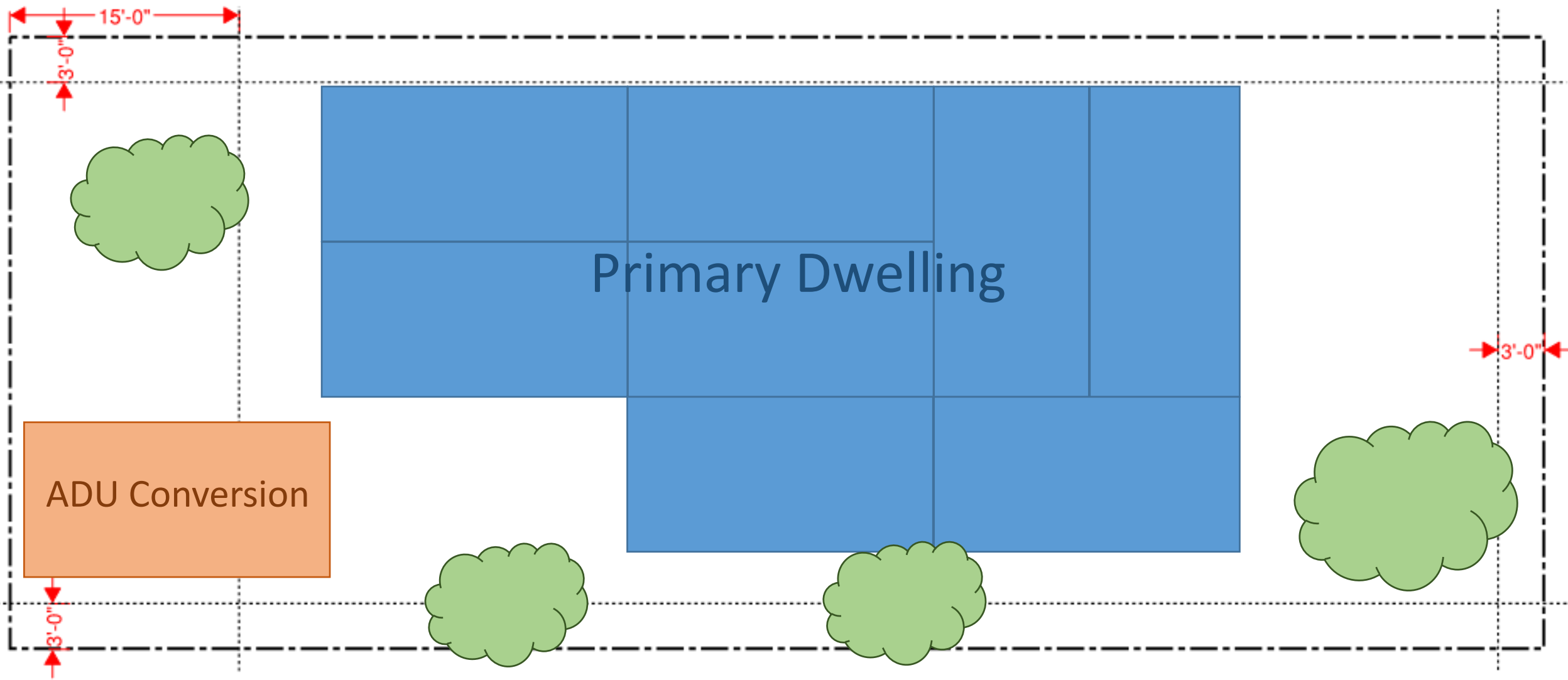


Scenario 1



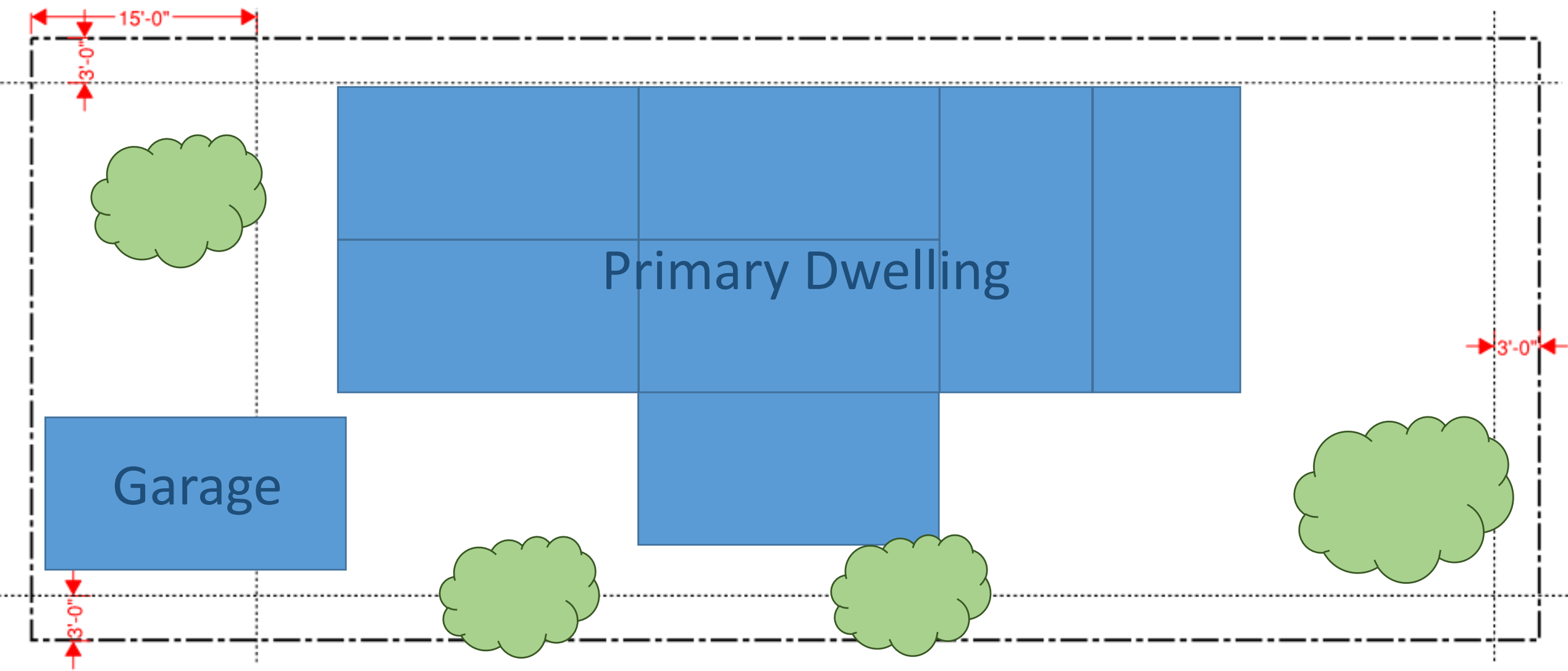


Scenario 1



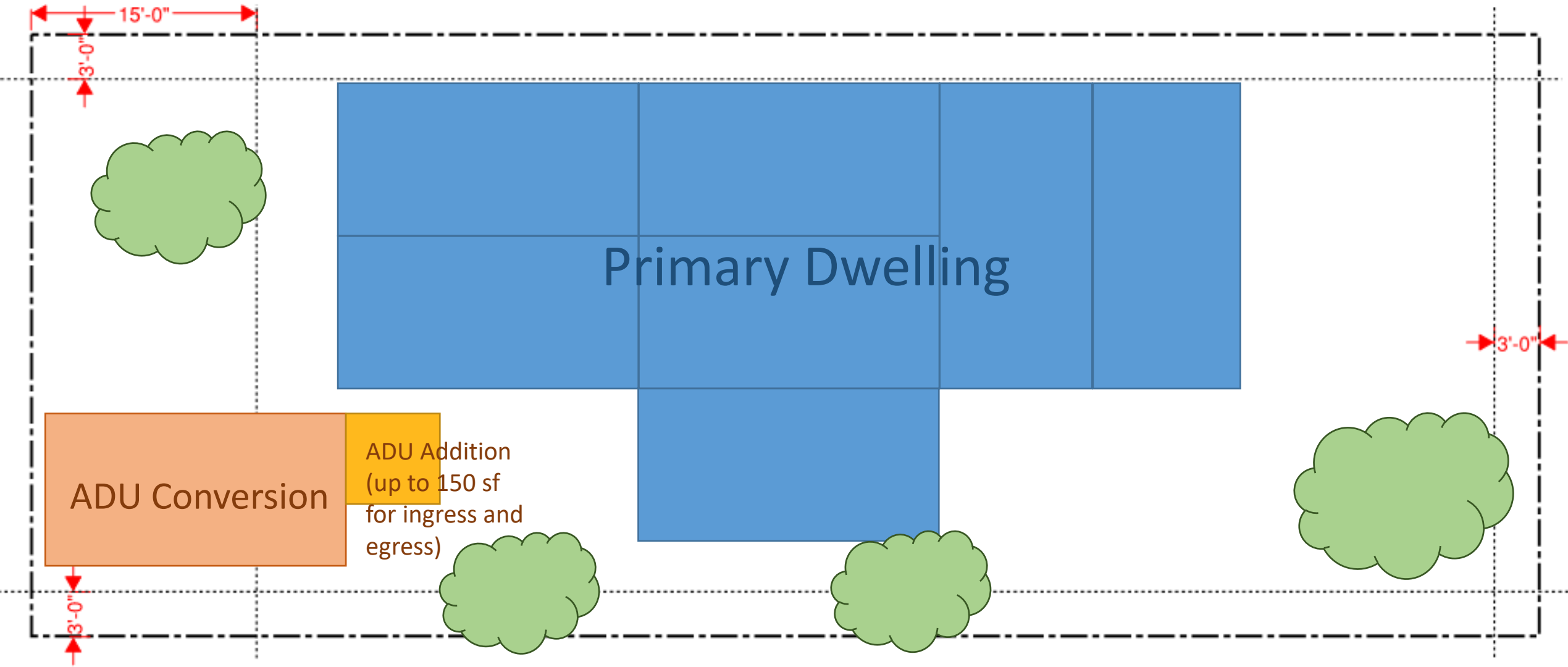


Scenario 2



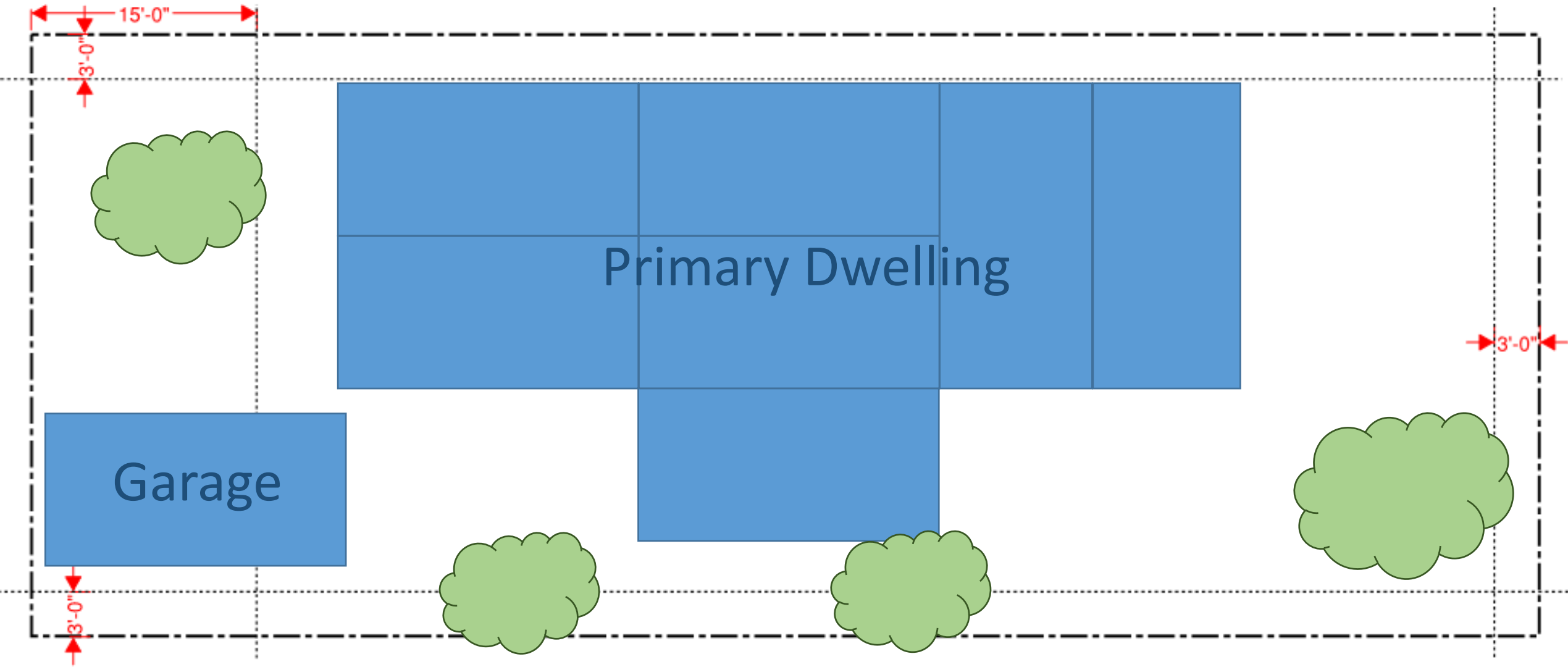


Scenario 2



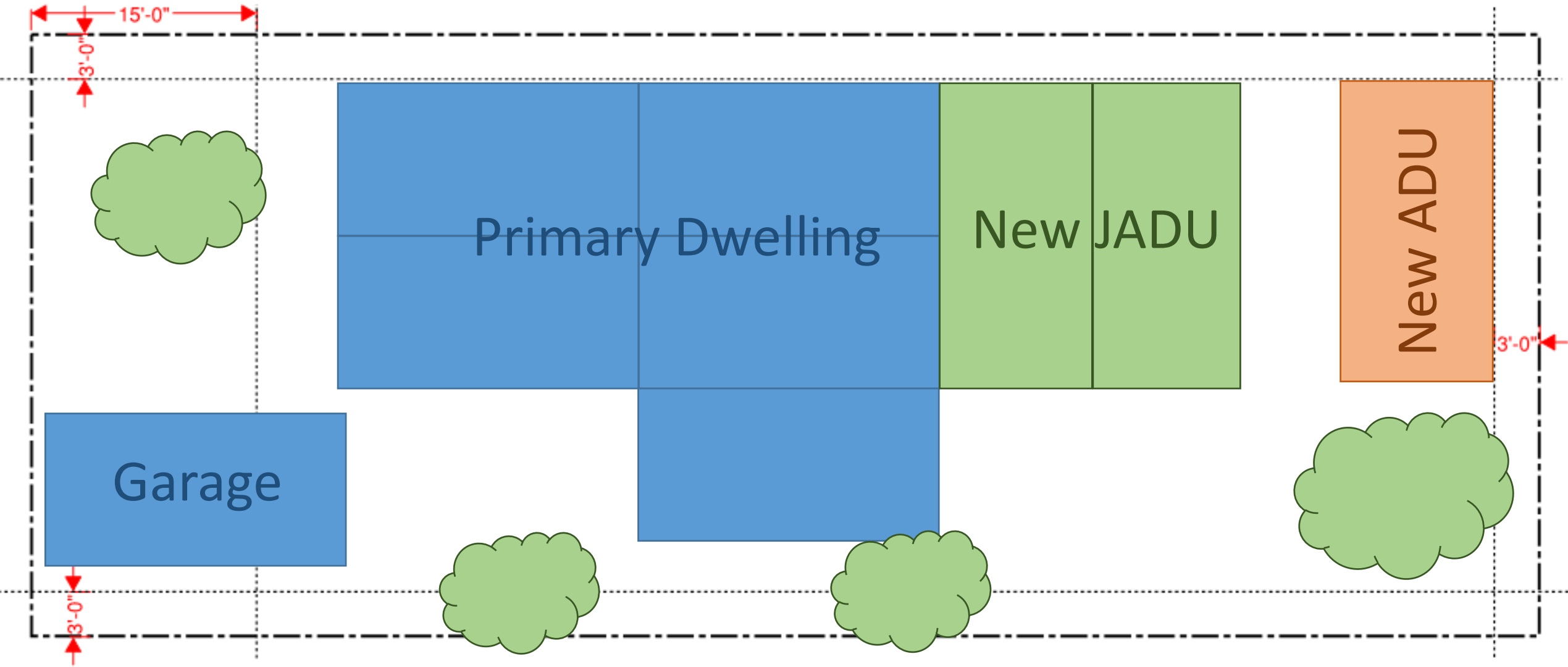


Scenario 3



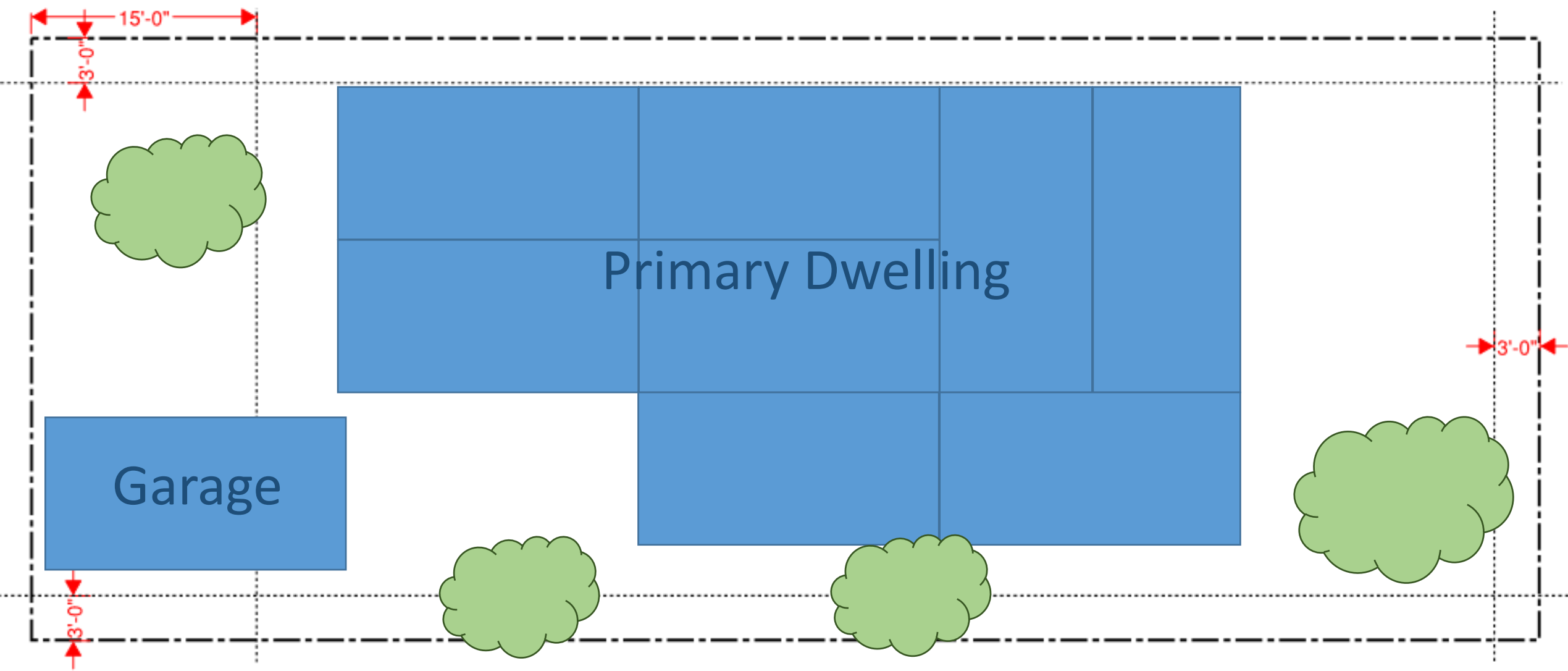


Scenario 3



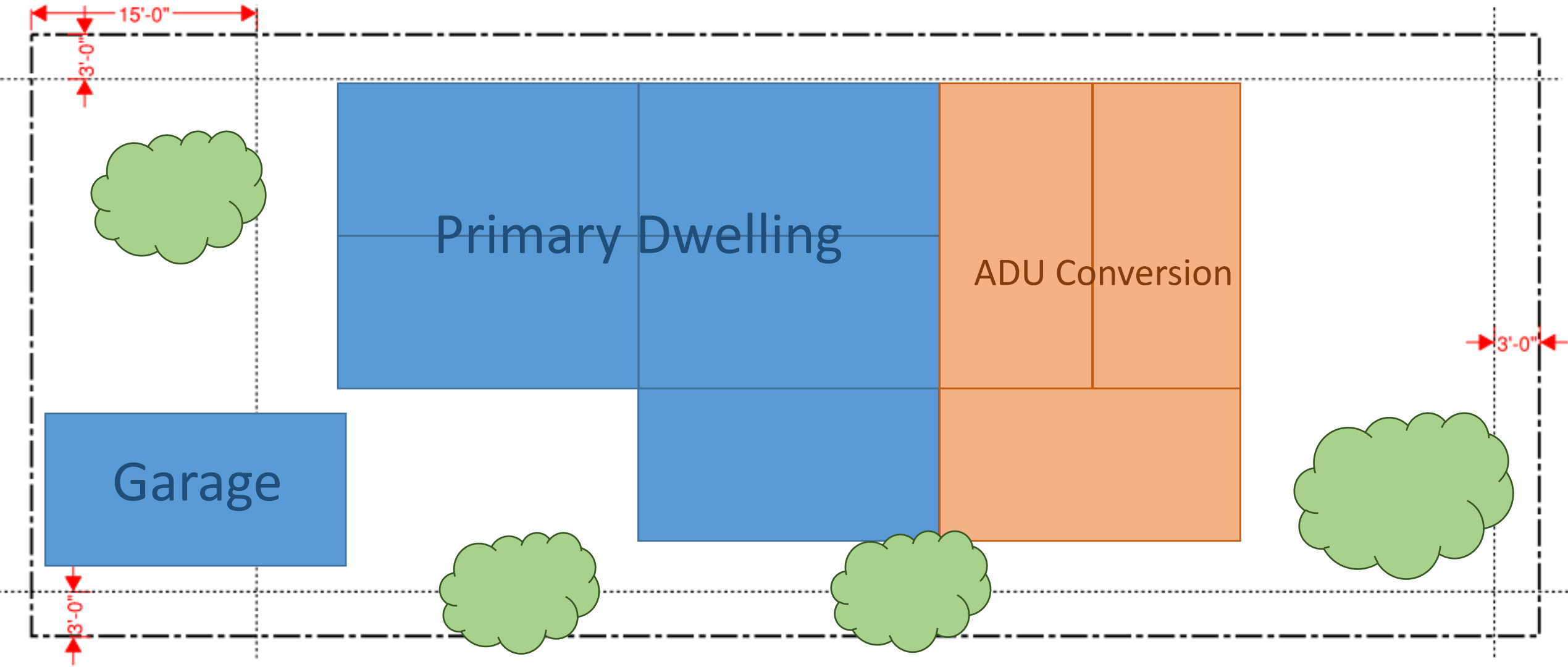


Scenario 4



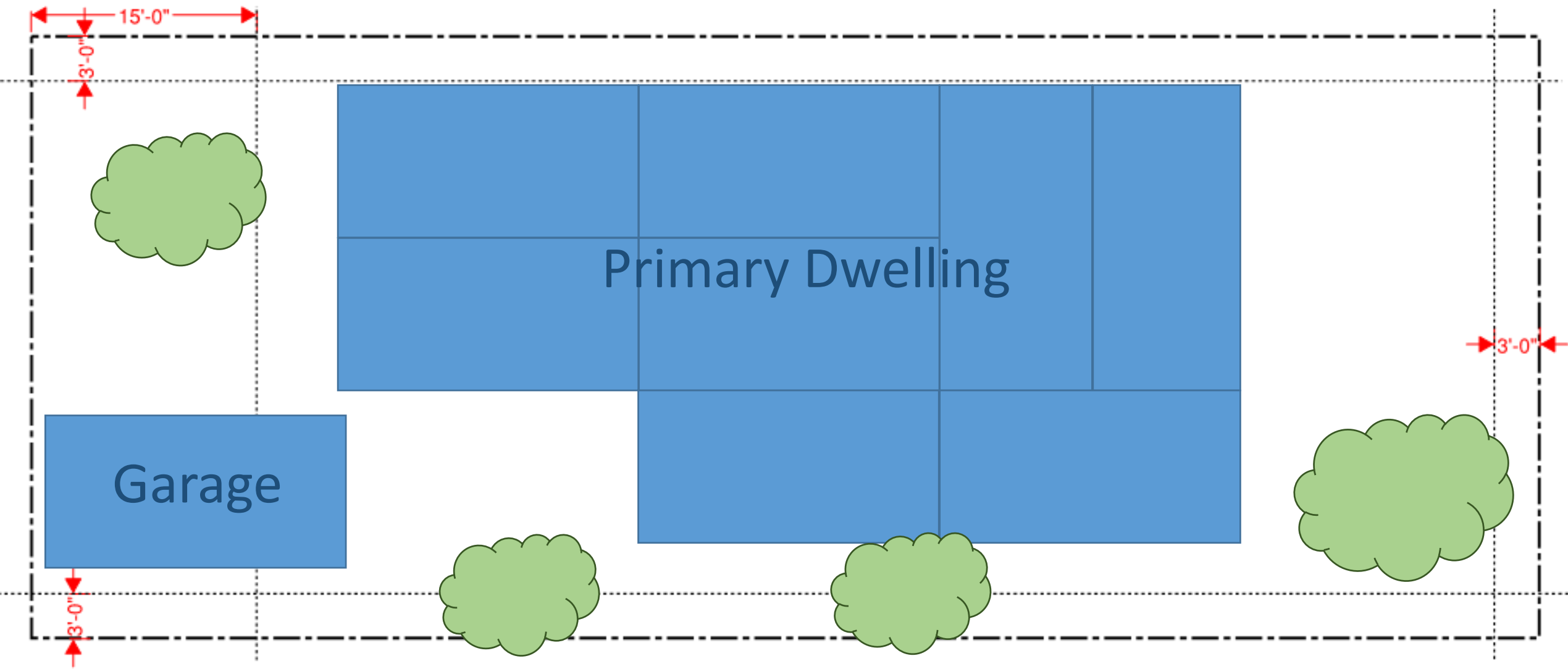


Scenario 4



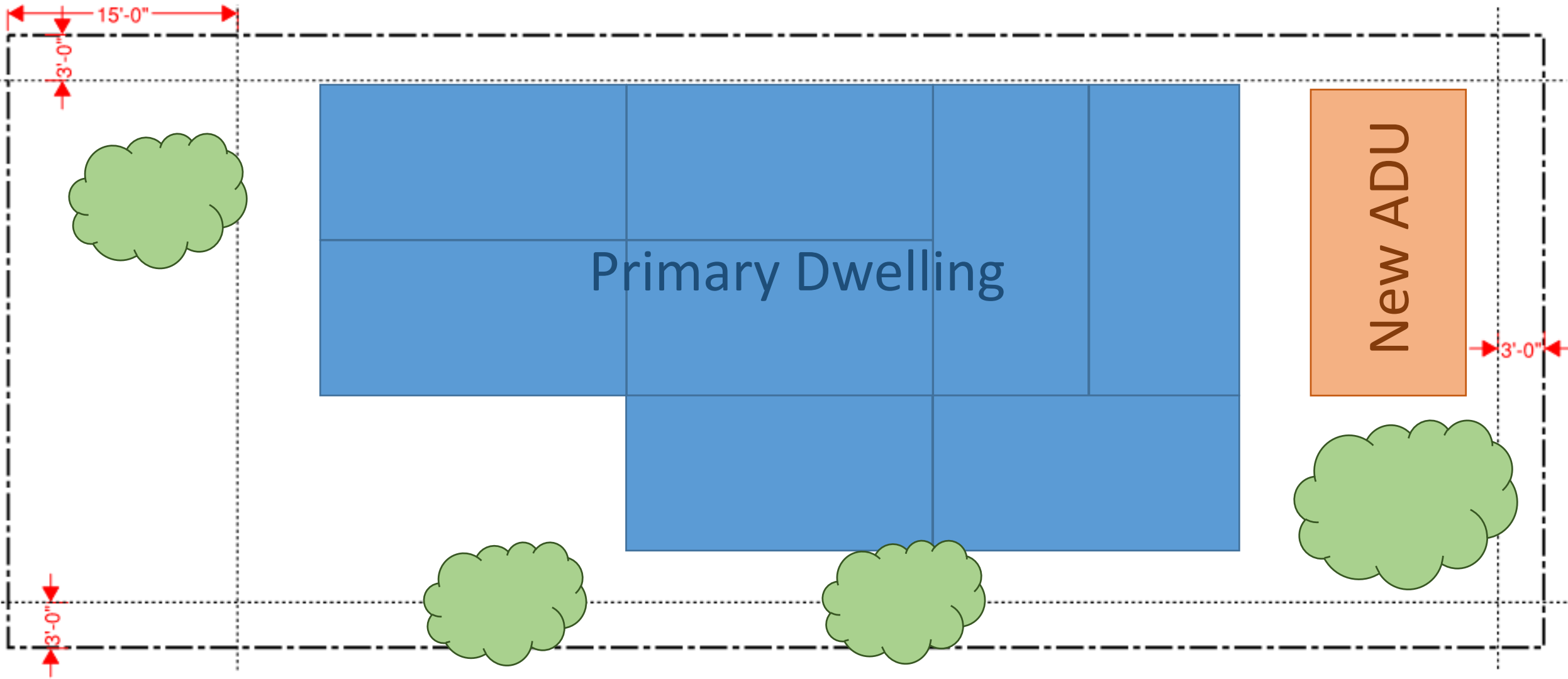


Scenario 5



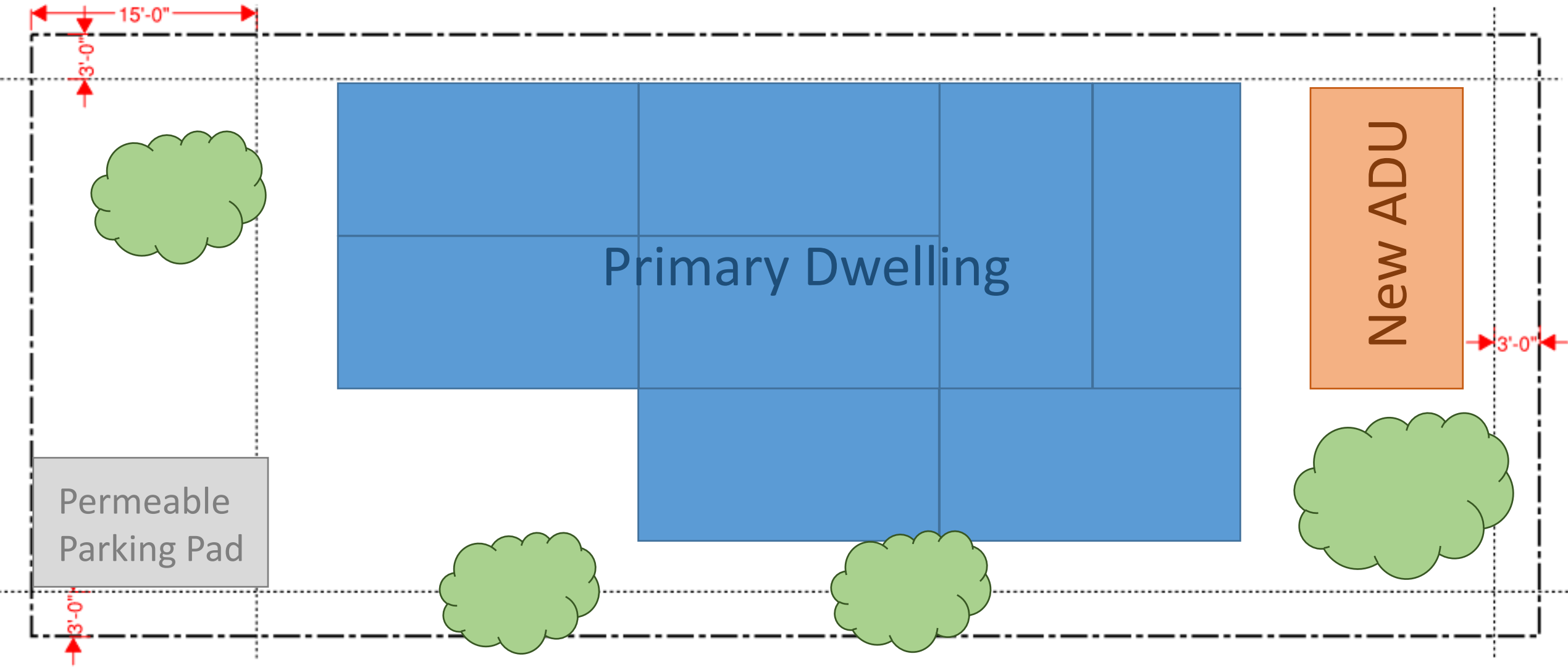


Scenario 5



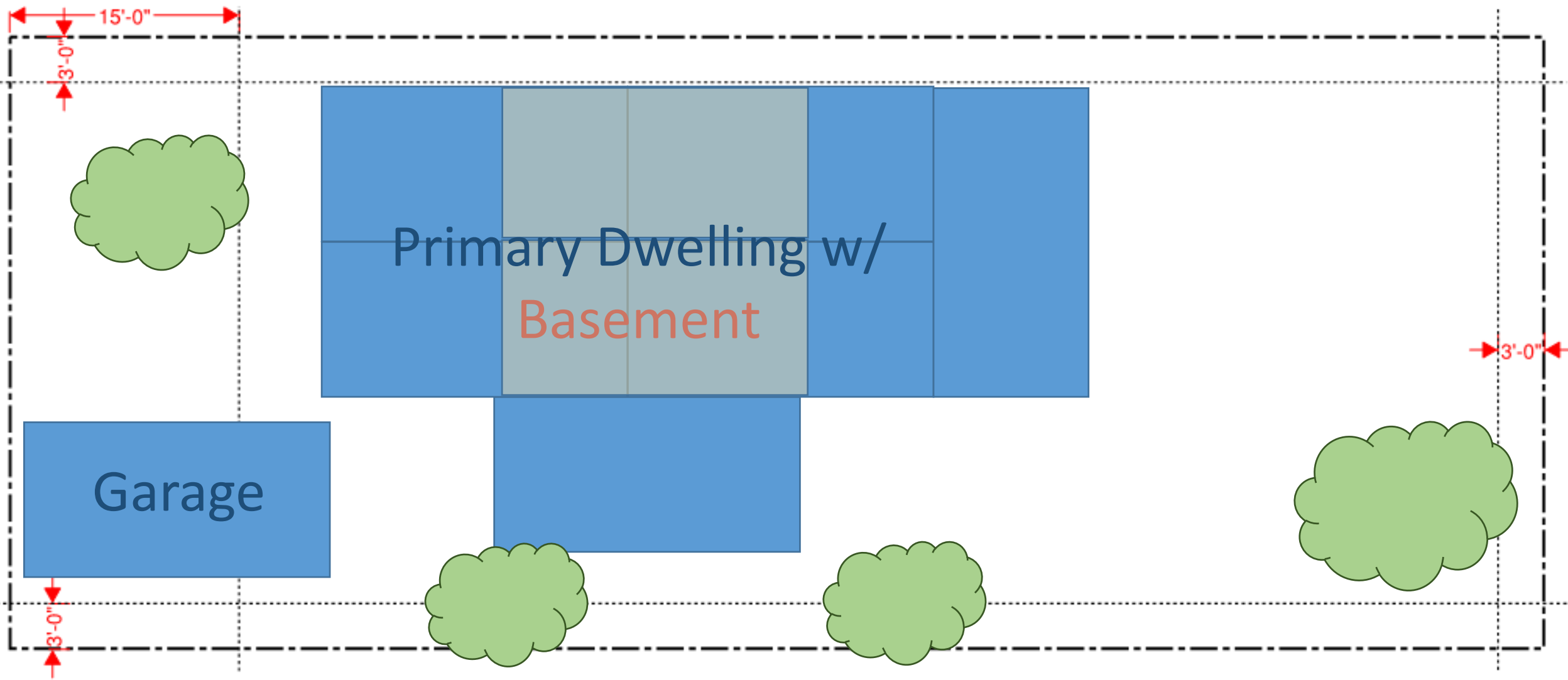


Scenario 5b



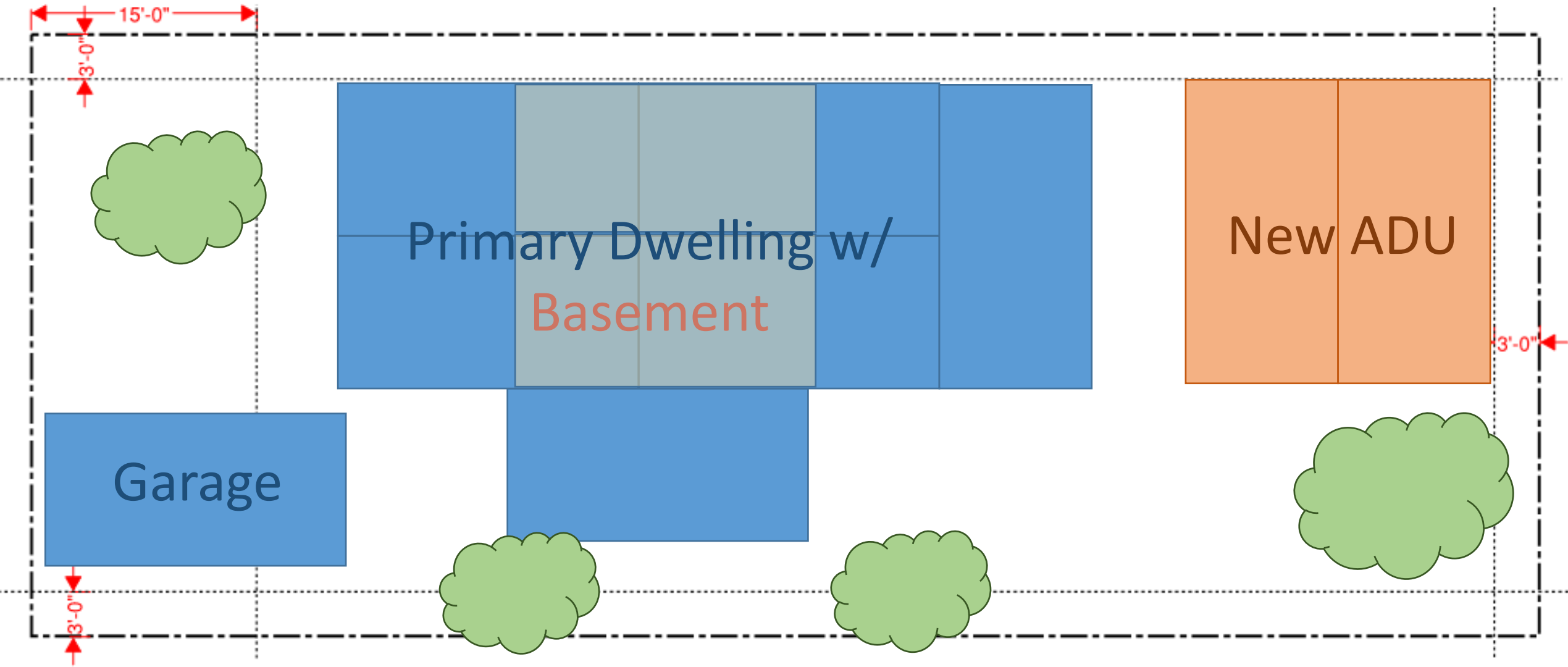


Scenario 6



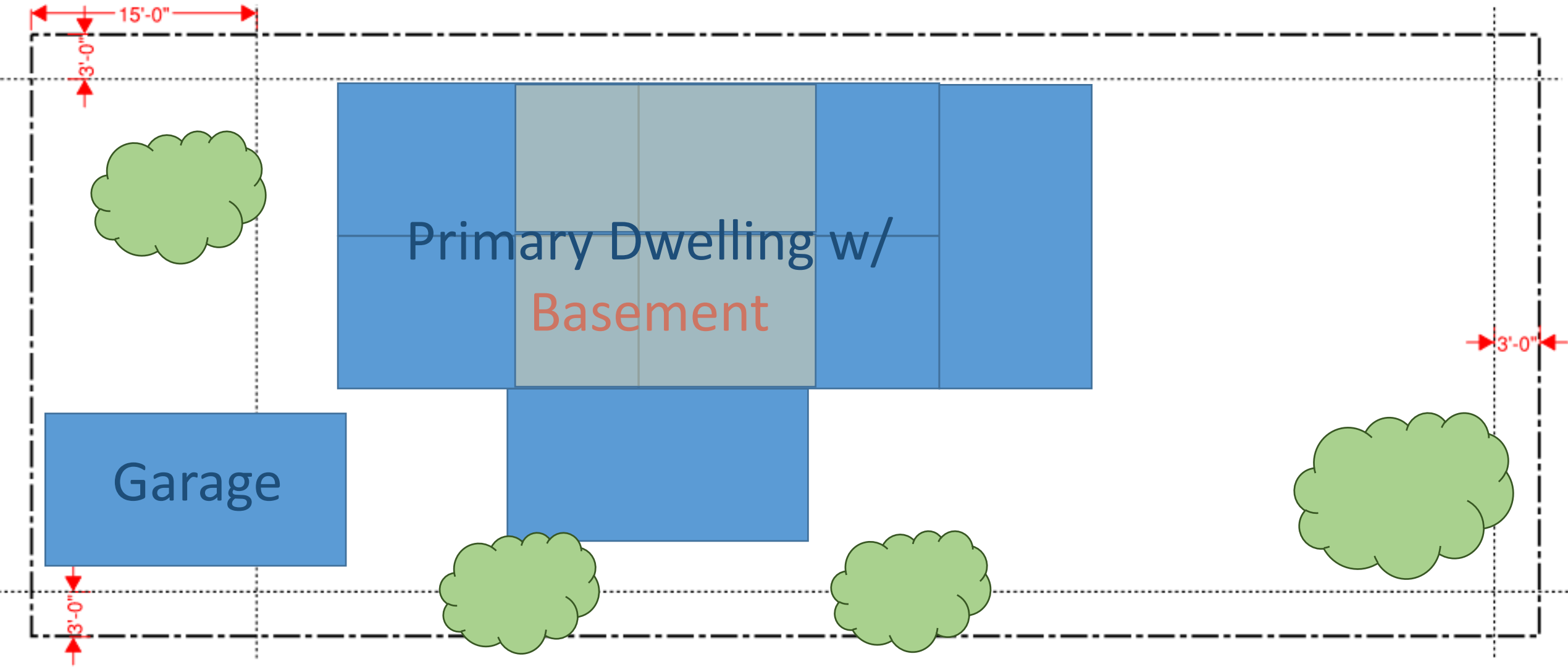


Scenario 6



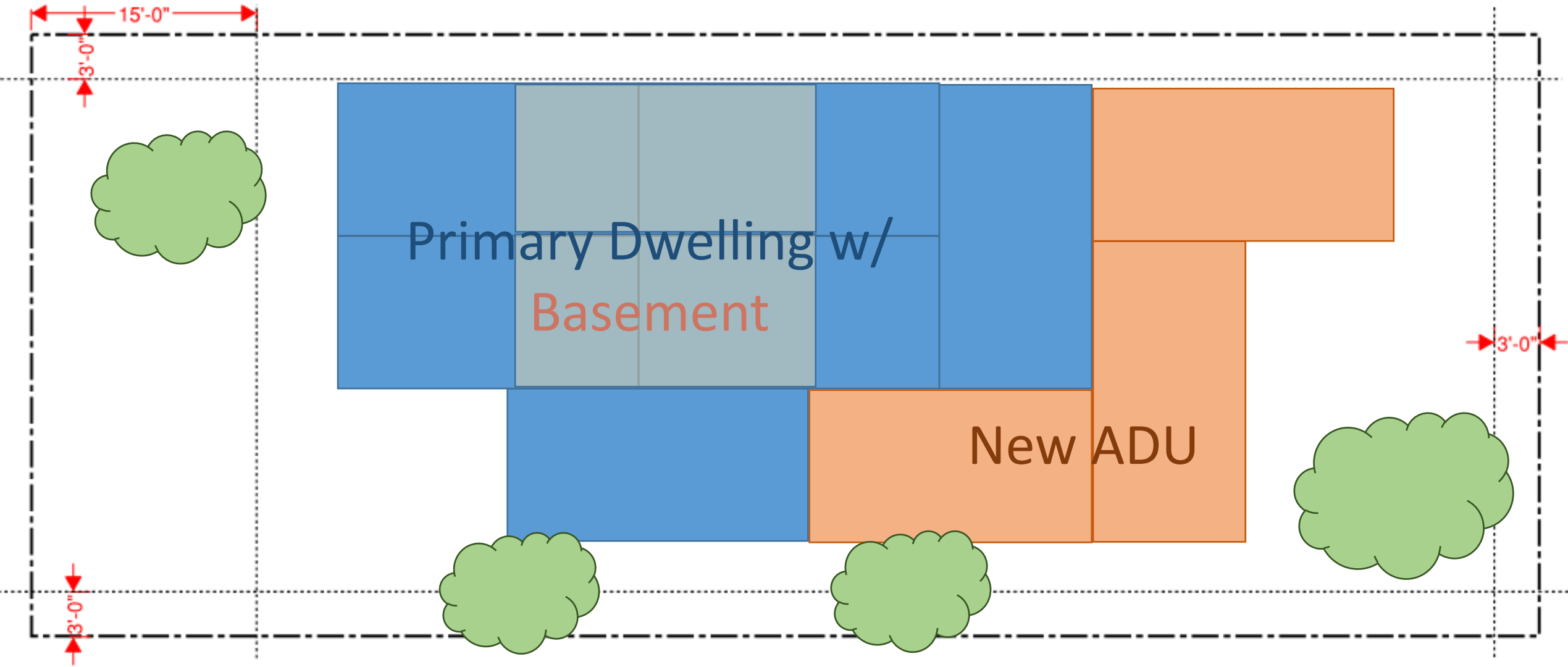


Scenario 7





Scenario 7





Workshop

Comments/Questions/Feedback



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

August 6, 2024
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Brandon Swanson, Assistant City Administrator
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Consider directing staff and the Forest and Beach Commission to explore a policy, prior to the end of 2024, that would balance the pickleball and tennis activities at Forest Hill Park with the surrounding residential uses.

RECOMMENDATION:

Direct staff and the Forest and Beach Commission to explore a policy, prior to the end of 2024, that would balance the pickleball and tennis activities at Forest Hill Park with the surrounding residential uses.

BACKGROUND/SUMMARY:

On September 9, 2021, the Forest and Beach Commission received the results of a short public survey regarding pickleball at Forest Hill Park. Specifically, the survey asked the question of whether additional striping should be added to the tennis courts to allow more space for pickleball. The staff report, which includes a link to the survey, have been included as Attachment 1. At the time of the Commission meeting, one of the tennis courts was already striped for pickleball, and one was not. After deliberations and public comment, the Commission voted to approve additional striping for pickleball. The action by the Commission did not include any policy direction for regulating the pickleball usage on the courts differently than the tennis usage (e.g.: allowed hours of the day, etc.).

Since the additional space for pickleball was created, and to some lesser extent, prior to this action as well, concerns from neighbors of Forest Hill Park have been raised about the noise associated with the activity. Pickleball, due to the type of ball that is used and the fast-paced nature of the game, is louder than tennis, and has been a source of concern for people living adjacent to courts in most cities where the game is played. Many other cities, including some in our area such as Pacific Grove, have developed policies regarding pickleball usage on public courts to help reduce the impacts to surrounding neighbors. For example, Pacific Grove limits pickleball usage on their public courts to Tuesday, Thursday and Saturday only, between the hours of 9am and 5pm (9am to 7pm from March to November).

With all of this in mind, Council is being asked to direct staff and the Forest and Beach Commission to explore the development of a more formal policy for the tennis courts at Forest Hill Park. The goal of the policy would be to balance the pickleball and tennis activities with the needs of those living near Forest Hill

Park to have some quiet enjoyment of their neighborhood. If Council provides this direction, staff will place an item on an upcoming Forest and Beach Commission agenda. Ultimately, a “Policy” can be created and implemented by the Forest and Beach Commission without it requiring future Council approval since one of the Commission’s duties is the management of the City’s parks (CMC 2.32.60). The Council would only be required to review and approve regulations for Forest Hill Park if they took the form of an Ordinance that was intended to be codified in the City’s Municipal Code. Of course, as part of its direction, Council could direct staff to bring a recommended policy from the Forest and Beach Commission prior to implementation if so desired.

FISCAL IMPACT:

The fiscal impacts associated with processing this policy would be captured in the adopted FY 2024-25 Public Works Operating Budget.

PRIOR CITY COUNCIL ACTION:

None.

ATTACHMENTS:

Attachment 1) September 9, 2024 Forest and Beach Commission Report



CITY OF CARMEL-BY-THE-SEA FOREST AND BEACH COMMISSION Staff Report

September 9, 2021
ORDERS OF BUSINESS

TO:	Forest and Beach Commissioners
SUBMITTED BY:	Sara Davis, City Forester
SUBJECT:	Tennis and Pickleball Court Options

RECOMMENDATION:

The Forest and Beach Commission is requested to weigh in on the decision to go forward with additional striping for additional pickleball games, or to leave one tennis court as it is.

BACKGROUND/SUMMARY:

In the past pickleball enthusiasts approached City staff requesting that we reconfigure the tennis courts in Forest Hill Park to allow for pickleball play. The City did restripe one court to accommodate pickleball play. Currently the courts allow for one tennis match and one pickleball game, or two tennis matches, or two pickleball games. Up to eight (8) people can play at one time.

Recently, pickleball enthusiasts noted the increasing popularity of the game and requested the City to restripe the other tennis court to accommodate up to two (2) additional pickleball courts which would result in up to 16 people using the courts at once.

It should be noted that tennis and pickleball players are both using the same tennis nets. However, tennis and pickleball games require nets of differing heights. The height difference has caused the existing nets to become damaged and not at the proper height for either sport. The pickleball community stated that they would provide their own movable nets to accommodate pickleball play if the City restripes the second tennis court.

The August 20, 2021 edition of the City Administrator's "Friday Letter" included a link to a survey which followed the following verbiage:

Calling All Tennis and Pickle Ball Players

We want to hear from you! The City is working with partners to install new tennis nets at the Forest Hill Park courts. At the same time, the City has been asked to re-stripe the playing surface to include two more pickle ball courts for a total of four. Movable nets would be provided by the pickle ball players.

Are you supportive of adding new striping for more pickle ball courts? Please click the link below to answer our short, three-question survey to let us know what you think.

The Survey link was also posted on the "Carmel-by-the-Sea Be Neighborly Facebook Group" (932 members) and "Carmel-by-the-Sea Nextdoor Neighborhood Group" (1,948 members).

The survey resulted in a total of 82 responses. Of these responses, 82% were in favor of additional striping for additional pickleball games, while 18% were opposed, apparently wishing to keep one tennis court available. Attachment 1 includes the results of the survey. Attachment 2 is a transcript of narrative from the survey asking respondents why they chose their response.

Staff is recommending that the Forest and Beach Commission weigh in on the decision to go forward with additional striping for additional pickleball games, or to leave one tennis court as it is.

FISCAL IMPACT:

A community member has volunteered to have the courts power washed before painting at no cost to the City. However, water quality control measures must be enforced.

The pickleball enthusiasts noted that they would provide the movable nets at no cost to the City. The only cost to the City would be the painting supplies and ongoing maintenance.

ATTACHMENTS:

[Attachment 1 - Survey Results](#)
[Attachment 2 - Survey Narrative](#)



CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

Staff Report

August 6, 2024
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Katherine Wallace, Associate Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	APP 24117 (Rodriguez) - Consideration of an Appeal of the Historic Resources Board's decision to add an individual property known as the "Henry J. Ohloff House" located at Camino Real 4 northwest of 11th Avenue to the Carmel Inventory of Historic Resources. APN: 010-275-006. RECOMMENDED FOR CONTINUANCE

RECOMMENDATION:

This item is being recommended for continuance to a future date due to applicant failure to complete public noticing.

BACKGROUND/SUMMARY:

Not applicable.

FISCAL IMPACT:

None related to this particular item.

PRIOR CITY COUNCIL ACTION:

None.

ATTACHMENTS:



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

August 6, 2024
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Evan Kort, Associate Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	PERM EN 23-242 (Maxcy-Levy) - Consideration of a Permanent Encroachment Permit application, PERM EN 23-242 (Maxcy-Levy), for the installation of pavers in the public right-of-way, fronting a single-family residence located at Camino Real 3 northwest of 8th Avenue. RECOMMENDED FOR CONTINUANCE.

RECOMMENDATION:

The applicant requested that this item be continued to a future meeting date to allow for additional time to work with staff to explore design alternatives.

BACKGROUND/SUMMARY:

FISCAL IMPACT:

PRIOR CITY COUNCIL ACTION:

ATTACHMENTS:



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

August 6, 2024
PUBLIC HEARINGS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Evan Kort, Associate Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	PERM EN 240031 (Das) - Consideration of a Permanent Encroachment Permit application, PERM EN 240031 (Das), for the legalization of, and modification to, existing encroachments in the public right-of-way, adjacent to a single-family residence located at the northeast corner of Sterling Way and Perry Newberry Way.

RECOMMENDATION:

Adopt Resolution 2024-071 denying a Permanent Encroachment Application (EN 240031) for the legalization of, and modification to, existing encroachments in the public right-of-way, adjacent to a single-family residence located at the northeast corner of Sterling Way and Perry Newberry Way. APN: 009-162-025-000.

BACKGROUND/SUMMARY:

EXECUTIVE SUMMARY

The applicant is requesting to legalize and maintain existing encroachments in the right-of-way. The subject encroachments were previously required to be removed from the right-of-way in accordance with the Conditions of Approval associated with a Design Study Application, however, the applicant has requested the encroachments be maintained in the right-of-way. The request for the encroachment has been referred to the City Council by the City Administrator for consideration in accordance with CMC 12.08.050.D.

BACKGROUND/SUMMARY

On May 8, 2024, the Planning Commission approved a Design Study Application, DS 23-171, Das, (Resolution 2024-034-PC) for a Final Design Study, Lot Merger, and associated Coastal Development Permit for the demolition of an existing 2,301-square-foot, one-story single-family residence with a 479-square-foot detached garage with 464-square-foot second-floor guesthouse, as well as 192 square feet of accessory structures and construction of a new 2,466-square-foot, one-story single family residence with a 478- square-foot attached garage located at the northeast corner of Sterling Way and Perry Newberry Way ([CLICK HERE](#) for staff report which includes link to approved project plans).

Staff had previously identified the subject encroachments which include walls, stairs, railings, and fencing area in the right-of-way during a Preliminary Site Assessment Application (PSA 23-089). In review of the property file, staff was unable to locate an encroachment permit for the subject encroachments or any form of associated approval for the existing installation. As such, the condition was included in accordance with CMC 12.08.125, Nonconforming Existing Encroachments.

The project approved by the Planning Commission included the removal of the subject encroachments. However, as standard practice for existing encroachments, a Condition of Approval ("CoA" - CoA #35) was included in the approval pertaining to the removal of the encroachments, which stated:

Prior to Building Permit Issuance, the applicant shall apply for and obtain a permanent encroachment permit for any existing unpermitted encroachments within the public right-of-way, or new improvements proposed to be located in the right-of-way. Any encroachments that are denied, or not approved, shall be noted for removal, as appropriate, on the plans submitted to the Community Planning and Building Department associated with the Building Permit application and indicate all unpermitted right-of-way encroachments shall be removed as part of the project. A right-of-way improvement plan (ex. landscaping) shall accompany the revised plan set, as appropriate.

CMC 12.08.125.A states: *At the transfer of property ownership or the issuance of a building permit, the Building Official shall inspect the public right-of-way adjacent to the affected private property. He/she shall require the abatement of any nonconforming encroachments or the property owner may submit an application for an encroachment permit that will be processed in accordance with CMC 12.08.050.*

While the City's practice of performing property inspections at the transfer of property ownership ceased in 1984 (Ordinance 84-13), the Community Planning and Building Department regularly performs site inspections as part of project reviews and requires the abatements of non-conforming encroachments as a Condition of Approval associated with the project. The General Plan/Land Use Plan also maintain goals,

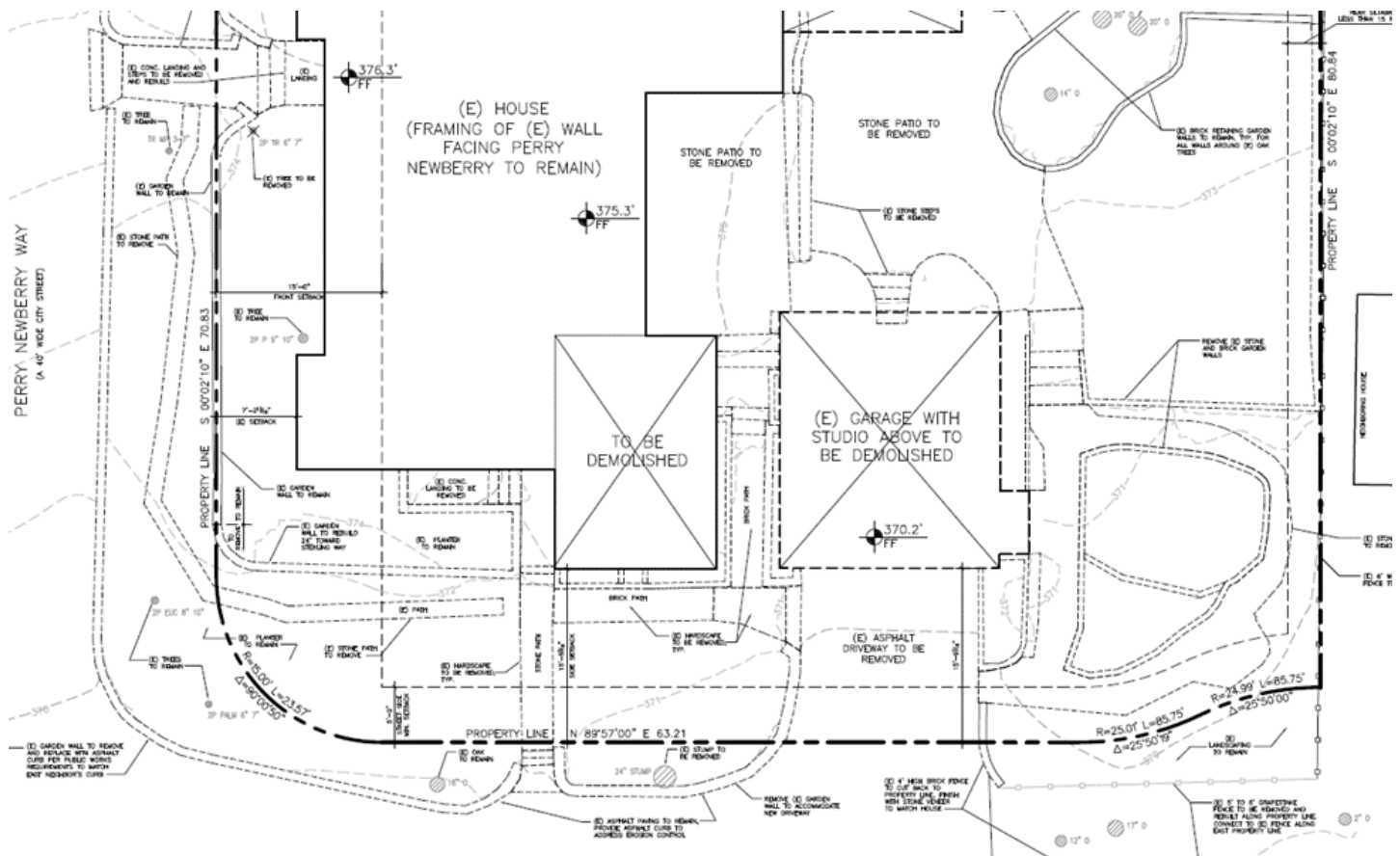
The request for the encroachment has been referred to the City Council in accordance with CMC 12.08.050.D, which states: *If the proposed encroachment does not conform to these standards (CMC 12.08.060), or it is the opinion of the City Administrator that the nature of the encroachment is contrary to the public interest or should be referred to the City Council for determination.*

CMC 12.08.050 outlines the process for which encroachment permits are reviewed. Encroachment permits may be approved by the City Administrator if the request conforms with the standards outlined in CMC 12.08.060, however, the City Administrator also reserves the right to refer any application to the City Council for consideration if the nature of the application is contrary to the public interest, or should be referred to the City Council for determination.

Need.

The applicant shall be determined to have a justifiable need for the encroachment, and the encroachment shall not be contrary to the public interest.

Staff Analysis: The applicant has not provided any justifiable need for maintaining the encroachment. The plans approved by the Planning Commission on May 8, 2024 included an alternative which proposed the removal of the subject encroachments and site modification all located within the property boundary. On July 22, 2024, the associated Building Permit Application (BP 240329) for the associated Design Study was submitted to the Building Division which also included the proposed removal of the subject encroachments.





STERLING WAY
(A 40' WIDE CITY STREET)



Figure 1. Encroachments identified to be removed on existing site plan; Building Permit BP 240329.

Safety.

The granting of an encroachment permit shall not create a hazard to public health or safety.

Staff Analysis: The proposed encroachment would not create a hazard to public health or safety.

Drainage.

The proposed encroachment shall not adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public and meet the standards herein.

Staff Analysis: The Public Works Superintendent had identified that previously installed pavers did support the drainage pattern for the block.

On November 21, 2023, the Public Works Superintendent inspected the site and found that *"the wall on the Perry Newberry side does act as a berm. The flow line is up against it. If you do have them remove it, grading and a rolled AC berm would be needed. Other than that [the wall] really serves no purpose."*

Removal of the encroachment would bring the right-of-way into compliance with Design Guidelines for the treatment of the right-of-way, as described in Section F, below.

The Community Planning and Building Department and Public Works Department also apply a standard Condition of Approval to projects where there is a natural slope in the right-of-way that does not accommodate the parking of vehicles. That condition requires:

Projects with a natural slope within the right-of-way immediately adjacent to the property where parking is not practical shall install jute netting and a drought tolerant ground cover to manage post-construction erosion control. Plants installed within the drip line of trees shall be selected from the City's "List of Compatible Plants Under and Around Native Trees" located in the Forest Management Plan.

Condition of Approval #35 for the associated Design Study already requires that *"a right-of-way improvement plan (ex. landscaping) shall accompany the revised plan set, as appropriate"* and additional measures could be implemented for erosion control, if necessary.



Figure 2a. Example landscaped/sloped right-of-way near subject site.



Figure 2b. Example landscaped/sloped right-of-way near subject site.

Circulation and Parking.

- a. The proposed encroachment shall not adversely affect vehicular and/or pedestrian traffic nor the parking of vehicles.
- b. The proposed encroachment shall not adversely impact existing rights-of-way nor preclude or make difficult the establishment or improvement of existing or potential streets or pedestrian ways.

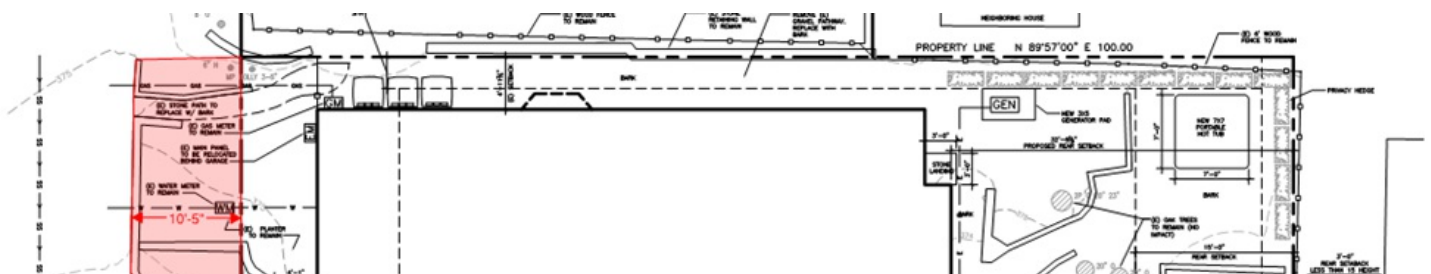
Staff Analysis: The existing encroachment does not substantially affect vehicular access. Removal of the encroachment may improve vehicular and pedestrian access as vehicles could be located further off the roadway and onto portions the unimproved right-of-way.

Public Use and Enjoyment.

- a. The proposed encroachment shall not diminish public use or enjoyment, either visual or physical, of the City property or public right-of-way to be encroached upon.
- b. The encroachment and enjoyment shall be in the public interest.
- c. The length of time an encroachment has existed shall not by itself prejudice a decision.

Staff Analysis: The encroachment diminishes public use and enjoyment by substantially reducing the amount of public open space of the right-of-way by effectively creating an extension of the property into the right-of-way. The walls surrounding the property reduces public use of the adjacent right-of-way by creating a physical barrier between the road way and the remainder of the right-of-way, as well as visual and physical access to the public greenbelt. While access could be made by stepping onto the retaining walls, a member of the general public has no way of discerning what is public property and what is private property.

Additionally, a portion of the existing encroachments physically enclose a portion of the yard. A wall and a fence located at the southeast corner of the adjacent right-of-way physically enclose a portion of the right-of-way and create an actual extension of a private yard with no opportunity for public access into this space.



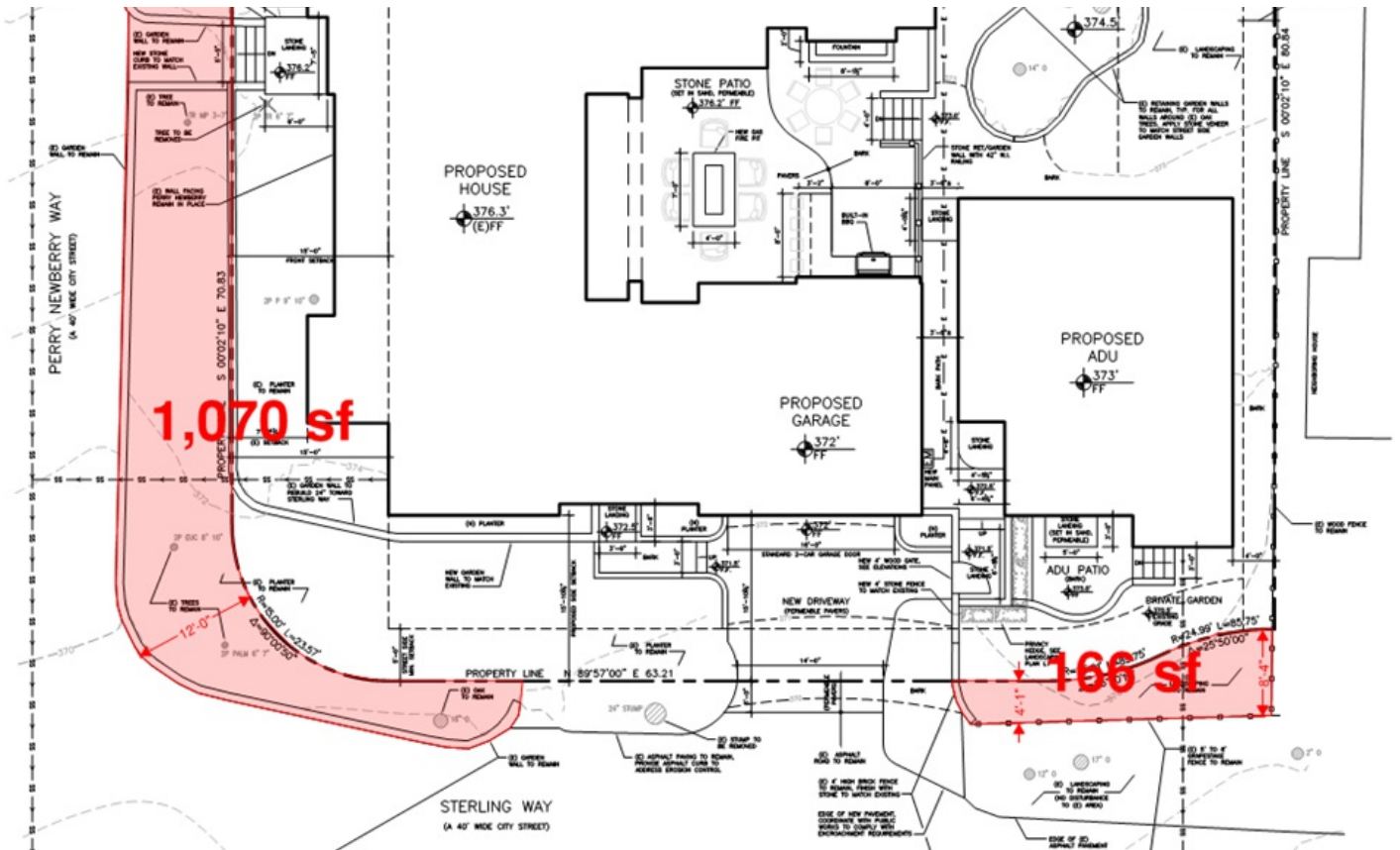


Figure 3. Proposed Site Plan (with encroachments proposed to be maintained); Area in **RED** identifies existing area between exterior boundary of encroachments at street edge and property line.





Figure 4a. Portion of subject existing encroachment. **RED** dashed line indicates approximate location of property line.



Figure 4b. Portion of subject existing encroachment. **RED** dashed line indicates approximate location of property line.



Figure 4c. Portion of subject existing encroachment. **RED** dashed line indicates approximate location of property line.

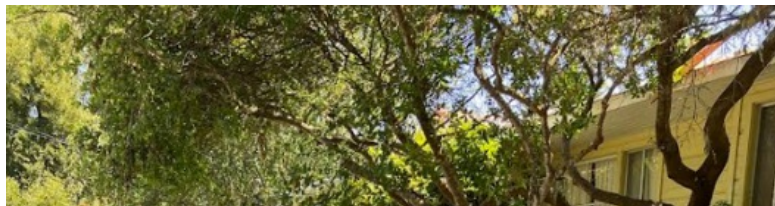




Figure 4d. Portion of subject existing encroachment. **RED** dashed line indicates approximate location of property line.

Compatibility.

1. The proposed encroachment and its mitigation shall be consistent with the General Plan and the adopted ordinances of the City. Particular attention shall be given to Section [P2-3] of the General Plan, which prohibits the construction of sidewalks and concrete curbs in the R-1 district, unless necessary for drainage and/or pedestrian safety.
2. The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent.
3. Granting of a permit shall not adversely affect the usability or enjoyment of one or more adjoining parcels.
4. The proposed encroachment and its mitigation shall be compatible with the surrounding area and adjoining properties.

Staff Analysis: The City has adopted clear standards that guide the treatment of the right-of-way that are described and adopted in the General Plan, zoning code, and Residential Design Guidelines. The proposed encroachment is contrary to the policy direction, design objectives, and standards of the zoning code. Relevant General Plan/Land Use Plan Policies, Ordinances, and Design Guidelines are described below.

Applicable General Plan/Land Use Plan Goals, Objectives and Policies; Ordinances; Design Guidelines:

P1-43 Maintain and enhance the informal, vegetated, open space character of the City's rights-of-way. Trees in the rights-of-way shall not be removed to provide parking. With the exception of driveways, installation of new paving in the rights-of-way by private property owners is prohibited. (LUP)

P2-3 Prohibit the construction of formal sidewalks and concrete curbs in the R-1 district. Allow informal pedestrian paths and drainage improvements where needed. Control other construction (e.g., retaining walls, pavement, etc.) in the City's public rights-of-way. (LUP)

- Subsection 1, above, specifically identifies General Plan Policy P2-3. As noted above, the Public Works Superintendent inspected the site and found that *"the wall on the Perry Newberry side does act as a berm. The flow line is up against it. If you do have them remove it, grading and a rolled AC berm would be needed. Other than that [the wall] really serves no purpose."*

The use of a wall as a drainage control is inconsistent with the city's design guidelines for the right-of-way. In accordance with the Residential Design Guidelines, *"a rolled gutter made of asphalt is typical of most neighborhoods,"* as suggested by the Public Works Superintendent. A retaining wall used to control the flow line is not only out of character with properties within the immediate vicinity (which use a rolled asphalt berm, when used) but is out of character with the Design Guidelines and General

immediate vicinity (which use a rolled asphalt permit, when used) but is out of character with the Design Guidelines and General Plan Policy, noted above.

P2-6 Maintain and encourage informal landscaped median strips and natural landscaped areas within public rights-of-way. (LUP)

G5-5 Maintain and enhance the informality of streetscapes. (LUP)

O5-16 Remove or reduce unnecessary or excessive hardscape and other nonconforming encroachments on City parklands and within street rights-of-way to provide for and promote planting of trees and native vegetation. (LUP)

P5-91 Require at the issuance of a building permit, the abatement or retroactive approval of any nonconforming encroachments in the public rights-of-way. (LUP)

P5-92 Look for opportunities to reduce or eliminate hardscape areas Citywide on public and private lands. Identify hardscape in the public rights-of-way and on-site that does not meet current policies or codes during preliminary site assessments and/or design review for all projects in the R-1 District. Require that project landscaping plans include the public rights-of-way. (LUP)

CMC 12.08.125. Nonconforming Existing Encroachments

At the transfer of property ownership or the issuance of a building permit, the Building Official shall inspect the public right-of-way adjacent to the affected private property. He/she shall require the abatement of any nonconforming encroachments or the property owner may submit an application for an encroachment permit that will be processed in accordance with CMC 12.08.050.

CMC 17.34.070.B. Public Right-of-Way in the R-1 District.

1. Landscaping in public rights-of-way in the R-1 district is limited to drought-tolerant plants that are native and are consistent with the character of the Monterey Peninsula environment.
2. Plants should be natural in character and informally arranged to reflect the surrounding forest atmosphere. Landscaping shall not include bedding plants, highly colorful flowering plants and "formal plant arrangements."
3. Landscaping should consist of leafy ground covers, low shrubs and/or trees of the urbanized forest. Natural dirt rights-of-way with pine needles is also permitted. Parking spaces may be defined in the unpaved right-of-way with landscaping.
4. Paving, gravel, boulders, logs, timbers, planters or other above-ground encroachments are prohibited, except paving for driveways. Pathways paved only with decomposed granite or other soil materials made of soil materials are permitted.

Residential Design Guidelines

1.5 Maintain and enhance the informal, vegetated, open space character of the right-of-way

- o Use simple planting plans when right-of-way landscaping is proposed.
- o Emphasize native plants
- o Do not add paving or boulders to the right-of-way.

1.7. Where a parking area in the right of way is to be defined, use a design that will reinforce the forest image.

- o Natural Soil, shredded bark and wood chips are preferred surface materials. Gravel is prohibited.
- o Separate an existing parking space in the right-of-way from any driveway with plantings.
- o Only the city is authorized to add paving or boulders in the public right-of-way, except in the cases of driveways and authorized encroachments.

2.2 Maintain existing patterns of street edge design and street paving

- o Avoid adding new pavement at the edge that would widen the street or create a parking space.
- o Maintain an informal unpaved and/or landscaped edge where it exists.

Public Property/Greenbelt.

- a. The proposed encroachment shall not adversely affect any public property, including existing vegetation or its root structure, and shall not significantly reduce greenbelt area that may be used for tree planting.
- b. Significant trees which would be affected by the proposed encroachment shall be identified by the Director of Forest, Parks and Beach and approval for removal shall follow City policy.

Staff Analysis: The General Plan describes the right-of-way as an important open space resource that contributes to the city's parklike environment. As described in the General Plan:

The city of Carmel has nine formally designated park, open space, and recreational areas as well as the Rio Park, which is located outside of the City limits, but is owned by the City. The parks and open space amount to over 68 acres of land. In addition, the City has approximately 67 acres of other areas that can be considered an important open space resource, but are not available for the traditional park and recreation use. Unimproved Right of Way, otherwise known as a linear greenbelt, as well as miniature parks are examples of such resources. (Open Space and Conservation Element, Page 7-6)

The General Plan further defines the greenbelt area as:

An unimproved right-of-way (ROW), where roadway width is reduced and a certain percentage of the ROW is dedicated to self-sufficient landscaping. Linear greenbelt landscaping might include shrubbery, decorative rocks, occasional benches, and trees that may also act as traffic calming features. Management of these areas is limited.

The City Forester has visited the site and has determined the existing trees in the right-of-way not impacted by the maintenance of the encroachment or the removal of the encroachment, provided the trees are appropriately protected during construction activities.

activities.

There is one oak tree located in close proximity to the wall along Sterling Way, and the forester specifically observed the tree roots of the subject tree being located inward toward the property and expects those roots are viable to support the tree even with the removal of the adjacent wall.



Figure 5. Trunk of tree located nearest to encroaching retaining wall. Subject tree roots (partially visible through foliage) are directed toward interior of site away from retaining wall.

The forester also observed irrigation systems throughout the landscaped area of the public right-of-way. In accordance with CMC 17.34.060.D, Irrigation and Maintenance, *“Privately installed irrigation systems within a public right-of-way adjacent to private property shall require the approval of an encroachment permit and shall be allowed only in the commercial and R-4 zoning districts.”* As such, staff also recommends the associated irrigation system also be removed.

Mitigation. When deemed appropriate by the City, the applicant shall include those measures appropriate to compensate the City for the loss of the use of City property or the public right-of-way, or to repair damage thereto.

Staff Analysis: As staff has recommended denial of the encroachment, mitigation has not been proposed. If the City Council is inclined to grant the encroachment, or a similar encroachment, mitigation may be considered to compensate the city for the loss of the use of the city's property or the public right-of-way.

PUBLIC CORRESPONDENCE:

At the time of writing this report, staff has received a number of correspondences from neighbors in support of maintaining the encroachments, specifically the stonewall within the right-of-way. These correspondences have been included as Attachment 2. Staff has not received any correspondence in opposition.

ENVIRONMENTAL REVIEW:

According to Section 15270 of the California Environmental Quality Act (CEQA), State CEQA guidelines, and local environmental regulations,

CEQA does not apply to projects which a public agency rejects or disapproves. Further, the physical removal of the encroaching features was considered as part of the associated Design Study (DS 23-171) as all encroaching features were proposed to be removed as part of that project. That project was found by the Planning Commission to be Categorically Exempt under Section 15303 (Class 3) – New Construction

or Conversion of Small Structures. If the Council directs staff to return with a resolution approving the encroachment or provides alternative direction, the appropriate CEQA analysis will be completed for the appropriate action.

FISCAL IMPACT:

There is no fiscal impact associated with the denial of the encroachment permit. However, it is recommended the city bear the cost of the berm recommended by the public works superintendent to connect the drainage flow as this requirement was not part of the of the original Design Study application conditions of approval and the associated building permit has been finalized. The cost of associated with the berm installation has already been attributed to the public works operating budget. The Public Work's Superintendent estimates installation cost of \$500 for materials and \$850 for labor. Should the city bear the cost of the demolition of the wall stonewall, it is estimated the removal would add approximately \$1,500 to the estimate.

PRIOR CITY COUNCIL ACTION:

The city council has not previously taken action on or considered this application.

ATTACHMENTS:

Attachment 1) Resolution 2024-071

Attachment 2) Correspondence

Attachment 3) Right-of-Way Vision Statement

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

Attachment 1

RESOLUTION NO. 2024-071

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DENYING A PERMEANT ENCROACHMENT APPLICATION (EN 24031, DAS) FOR THE LEGALIZATION OF, AND MODIFICATION TO, EXISTING ENCROACHMENTS IN THE PUBLIC RIGHT-OF-WAY, ADJACENT TO A SINGLE-FAMILY RESIDENCE LOCATED AT THE NORTHEAST CORNER OF STERLING WAY AND PERRY NEWBERRY WAY. APN: 009-162-025-000.

WHEREAS, on February 20, 2024, Anatoly Ostretsov, ("Applicant") submitted an application on behalf of Tony and Bernice Das ("Owner") requesting approval of a Permeant Encroachment Permit application EN 24-031 (Das) described herein as ("Application"); and

WHEREAS, the Application has been submitted for the property located at the northeast corner of Sterling Way and Perry Newberry Way in the Single-Family Residential (R-1) District; and

WHEREAS, the Applicant is proposing the applicant is requesting to legalize and maintain existing non-conforming encroachments in the right-of-way; and

WHEREAS, CMC 12.08.125.A states, *At the transfer of property ownership or the issuance of a building permit, the Building Official shall inspect the public right-of-way adjacent to the affected private property. He/she shall require the abatement of any nonconforming encroachments or the property owner may submit an application for an encroachment permit that will be processed in accordance with CMC 12.08.050; and*

WHEREAS, the application has been referred to the City Council in accordance with CMC 12.08.050.D, which states: *If the proposed encroachment does not conform to these standards (CMC 12.08.060), or it is the opinion of the City Administrator that the nature of the encroachment is contrary to the public interest or should be referred to the City Council for determination; and*

WHEREAS, on July 26, 2024, a notice of the public hearing scheduled for July 6, 2024, was published in the Carmel Pine Cone in compliance with State law (California Government Code 65091) and mailed to owners of real property within a 300-foot radius of the project indicating the date and time of the public hearing; and

WHEREAS, on or before July 27, 2024, the Applicant posted the public notice on the project site and hand-delivered a copy of the public notice to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on July 6, 2024, the City Council held a public hearing to receive public testimony regarding the Encroachment Permit, including without limitation, information provided to the City Council by City staff and through public testimony on the conceptual design of the project; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the Council at the hearing including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the City Council did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the California Environmental Quality Act (California Public Resources Code §§

21000, *et seq.*, “CEQA”), together with State Guidelines (14 California Code Regulations §§ 15000, *et seq.*, the “CEQA Guidelines”) and City Environmental Regulations (CMC 17.60) require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, according to Section 15270 of the California Environmental Quality Act (CEQA), State CEQA guidelines, and local environmental regulations, CEQA does not apply to projects which a public agency rejects or disapproves. Further, the physical removal of the encroaching features was considered as part of the associated Design Study (DS 23-171) as all encroaching features were proposed to be removed as part of that project. That project was found by the Planning Commission to be Categorically Exempt under Section 15303 (Class 3) – New Construction or Conversion of Small Structures; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Carmel-By-The-Sea made the following findings and determinations regarding Encroachment Permit Application EN 24-031 (Das):

- 1) There is no justifiable need for the encroachment;
- 2) The encroachment may impact the public’s right to access the right-of-way (visual and physical);
- 3) The encroachment is incompatible with the policies, ordinances, and design guidelines for the treatment of the right-of-way; and
- 4) The encroachment would diminish the ability to enhance and improve the public greenbelt.

BE IT FURTHER RESOLVED that the City Council of the City of Carmel-by-the-Sea does hereby:

DENY a Permeant Encroachment Application (EN 24-031) for the legalization of, and modification to, existing encroachments in the public right-of-way, adjacent to a single-family residence located at the northeast corner of Sterling Way and Perry Newberry Way. APN: 009-162-025-000. Encroachments shall be removed and right-of-way improvements shall be carried out consistent with the Design Study Approval, DS 23-171, and the associated Conditions of Approval (Resolution 2024-034-PC).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk

May 1, 2024

Evan Kort, Project Planner
Brandon Swanson, Director of Planning and Building
Michael LePage, Chair of the Planning Commission

Re: DS 23-171 & LM 23-172 (Das)

Gentlemen;

We are owners and residents of houses in the immediate vicinity of the property that is the subject of the above proposed actions.

It is our understanding that as a condition to the approval of the above actions, the project proponent will be required to remove the existing stone retaining wall that is currently in the city's right of way and replace the wall with an asphalt berm. We respectfully request that the city reconsider this requirement. The stone wall is an attractive enhancement to the neighborhood and is certainly more desirable from an esthetic position than a simple asphalt berm. Moreover, removing the beautiful stone wall and discarding it in a landfill is wasteful and very environmentally unfriendly.

The requirement to remove the wall is especially surprising in light of the fact that using real stone as a building material in remodels or new construction is, as we understand it, generally looked upon favorably by the planning commission.

While we appreciate the tight architectural controls that are a hallmark of Carmel by the Sea and believe that such controls enable the village to retain its beloved character, we also think that destroying a beautiful stone wall that enhances our neighborhood is not an action that is in keeping with the spirit of the community. We also worry that the removal of the wall will inadvertently damage a large existing oak tree adjacent to the wall. The wall has been in place for many decades and there is no good reason for its removal at this time.

We understand the city's concern about allowing an encroachment in the city's right of way. But that can be easily handled by an appropriately drafted encroachment permit that indemnifies the city, requires evidence of reasonable insurance, and requires the applicant to remove the encroachment at the applicant's sole cost and expense upon request by the city. The permit would be recorded against the property, thereby binding all future owners. This is a practice followed by many other cities in California and there is no reason why the City can't do the same.

Thank you for your consideration.

Respectfully,

*Richard and Debra Luther
Sterling Way 2NE Perry Newberry*

Cc: Tony and Bernice Das
Anatoly Ostretsov

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Thank you for your consideration.

Respectfully,

Tanet Dahle
SW Corner of 5th & Perry Newberry Way

Cc: Tony and Bernice Das
Anatoly Ostretsov

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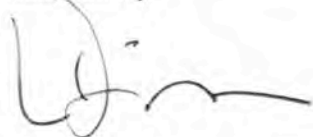
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6TH AVE 3 SE PARPENTER

Cc: Tony and Bernice Das
Anatoly Ostretsov

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Respectfully,

Gordney Kramer + Kevin Kramer
6th Ave 4 SE Carpenter
703 851 7114

Cc: Tony and Bernice Das
Anatoly Ostretsov

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Thank you for your consideration.

Respectfully,

Jewel Anna & Anne Loran
Perry Newberry 25W of 5th
Carmel by the Sea

Cc: Tony and Bernice Das
Anatoly Ostretsov

May 1, 2024

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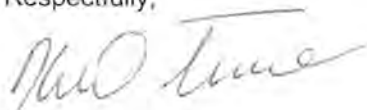
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Respectfully,



Kristin Tirreno

156 5th Perry Newburg way

EBT



DANIEL TIRRENO

Cc: Tony and Bernice Das
Anatoly Ostretsov

May 1, 2024

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We are owners and residents of houses in the immediate vicinity of the property that is the subject of the above proposed actions.

It is our understanding that as a condition to the approval of the above actions, the project proponent will be required to remove the existing stone retaining wall that is currently in the city's right of way and replace the wall with an asphalt berm. We respectfully request that the city reconsider this requirement. The stone wall is an attractive enhancement to the neighborhood and is certainly more desirable from an esthetic position than a simple asphalt berm. Moreover, removing the beautiful stone wall and discarding it in a landfill is wasteful and very environmentally unfriendly.

The requirement to remove the wall is especially surprising in light of the fact that using real stone as a building material in remodels or new construction is, as we understand it, generally looked upon favorably by the planning commission.

While we appreciate the tight architectural controls that are a hallmark of Carmel by the Sea and believe that such controls enable the village to retain its beloved character, we also think that destroying a beautiful stone wall that enhances our neighborhood is not an action that is in keeping with the spirit of the community. We also worry that the removal of the wall will inadvertently damage a large existing oak tree adjacent to the wall. The wall has been in place for many decades and there is no good reason for its removal at this time.

We understand the city's concern about allowing an encroachment in the city's right of way. But that can be easily handled by an appropriately drafted encroachment permit that indemnifies the city, requires evidence of reasonable insurance, and requires the applicant to remove the encroachment at the applicant's sole cost and expense upon request by the city. The permit would be recorded against the property, thereby binding all future owners. This is a practice followed by many other cities in California and there is no reason why the City can't do the same.

Thank you for your consideration.

Respectfully,



Heather Das
6th Ave & N Perry Newberry

Cc: Tony and Bernice Das
Anatoly Ostretsov



Right-of-Way Vision Statement

In most neighborhoods, the edges of the public right-of-way (between the road edge and adjacent private property lines) are unpaved. The right-of-way is often left unplanted resulting in an informal character of volunteer plantings, packed earth and pine needles. The right-of-way is also often planted with indigenous species consistent with a forest appearance. Both approaches contribute to a linear green belt appearance that helps to create the "village in a forest" character that defines the City.

The City has adopted clear standards that guide the treatment of the right-of-way in the residential district. These standards can be found at www.ci.carmel.ca.gov or at the Department of Community Planning and Building located at City Hall. Some of these standards include:

- Drought-tolerant, native plants, informally arranged may be permitted.
- Formal plant arrangements with highly colorful flowering plants are prohibited.
- When possible, plantings should not extend to the street edge to allow for off-street parking.
- Paving, gravel, boulders, logs, timbers, planters or other above-ground encroachments are prohibited, except paving for driveways, unless an encroachment permit has been obtained from the City.
- A narrow crushed Decomposed Granite pathway from the street to the property entrance may be allowed without an encroachment permit.

The City is requesting your assistance to ensure that the right-of-way adjacent to your property complies with City standards. If you would like assistance in determining whether the right-of-way adjacent to your property is out of compliance, please contact the Department of Community Planning and Building at (831) 620-2010.