Date: November 9, 2012 – 2:00 pm
City Manager’s Conference Room - City Hall
300 Forest Avenue, Pacific Grove, CA

1. CALL TO ORDER
Kim Murdock called the meeting to order at 2:00 p.m.

2. INTRODUCTIONS
Present: James Hall, Barbara Wells, Carl Mounteer and Kim Murdock
Absent: None
Staff: City Attorney David Laredo, Deputy City Attorney Heidi Quinn, Code Compliance Officer Terri Schaeffer, City Manager Thomas Frutchey, Advanced Planning Program Manager Lynn Burgess

3. ORAL COMMUNICATIONS
None

REGULAR AGENDA:

4. Review Hearing Panel & Hearing Officer Purpose and Authority
City Clerk David Concepcion administered the Oath of Office to panel members.
Dave Laredo commented that the oath or pledge contributes to the validity of the enforcement proceedings.
The role of the panel is to provide an administrative remedy for code enforcement that is not a civil or criminal court action. An alternative path under the government code with decisions that may be reviewed by Superior Court.
There are still 3 openings for the panel. Members were asked to help recruit new members.
Chapter 1.19 of the Pacific Grove Municipal Code was distributed and the panel was informed that it was the foundation of their authority to act.
The City Attorney’s Office acts as advisor of procedure to the Hearing Panel and any Hearing Officer sitting at a Hearing. The City Attorney cannot advise the Officer how to decide or what to decide and cannot act as defense or prosecutor.
The Council designed this role so that the City Attorney can defend the City should any matter go on to Superior Court.
The City Staff, specifically, the Code Compliance Officer acts a prosecutor in a Code Enforcement proceeding and provides all evidence and witnesses to support the City’s case.
The responding party may or may not be represented by legal counsel. There is no requirement that they be represented.
5. **Review of Hearing Rules and Procedures**

The Hearing Rules and Procedures provide details to the actions of staff and panel. These rules have been developed by the Panel, have been adopted by the Panel and can be changed by the Panel. The Panel must first provide Notice and Public Hearing and then may Amend the Rules. The powers of the Panel can be found in PGMC §3.20.060.

The rules delineate what happens when a Hearing is requested. Due process is guaranteed with fair notice requirements; all parties will have the opportunity to be heard; however the Hearing does not have the regimentation of a courtroom, it is more flexible and loose. The process is not unique, many cities have adopted similar Hearing procedures, and the Pacific Grove process was modeled after the City of San Jose and Monterey programs.

Hearings are scheduled with the Hearing Officer schedule in mind. Hearing Officer conducts the hearing by receiving verbal testimony from both parties. The Hearing is recorded and the Hearing Officer should make sure the record is clear. The Hearing Officer has the discretion to admit evidence the day of the Hearing and to determine how much value any evidence is given. If hand offs are made during the Hearing the Hearing Officer should reflect the movements verbally to add to the record. If a transcript is requested then it must be provided to all parties.

There are no constraints on technical evidence. Most evidence is supplied prior to the Hearing; the Hearing Officer may request additional evidence. Hearing Officer may request to see a property. Whatever requests are made must also be available to all parties.

Kim asked what if more information is needed for a decision. Dave suggested that the Hearing Officer consider whose burden was it to provide the information and that could be used as the basis for the decision. The Hearing Officer can reopen the Hearing for more questions, but should also consider that all sides have been given the equal opportunity to provide documentation and whose error is it if something is missing.

Once the Hearing is concluded the Hearing Officer comes up with the findings which become the decision and order. All facts should be tied to what is concluded in the findings. This becomes a “road map” for any court that may review it. City Attorney may review draft findings and conclusions but will never alter the decision. The Hearing Officer has authority to formulate the decision which concludes the process.

6. **Review Bias, Conflicts, Due Process and Other Hearing Requirements**

The Panel must follow the Brown Act and must understand what is allowable in terms of meetings. Panel members should attend available training, next offered by the City Attorney’s office on 12/6 @ 9:30 am in the Police Training Room. Otherwise the State offers an online module called AB1234. Each member should have 2 hour contact Training in Brown Act within 12 months of appointment.
In general, if there is quorum then you cannot discuss panel business. If talking one on one about issues that is acceptable. Be careful with email. If email sent to one member okay, if you want a global email sent to all members ask Terri Schaeffer to send it. City Attorney’s office also available for clarification. The panel is encouraged to meet on an as needed basis, just follow proper noticing procedures. Use common sense. During the Hearing process, remember that any communication you have with the City, you are obligated to share the same with the other parties. There is an ex parte obligation to treat all parties fairly.

7. **Review the Type and Frequency of Pending Matters**
The Code Compliance Officer offered handouts to demonstrate the process and evidence provided at the time of a Hearing request. A Flow Chart represented an intensive, lengthy process that usually culminates in voluntary compliance. The City has had hearings that ranged from the highly contested to others that ended in default proceedings. Overall, the majority of cases investigated have to do with either illegal construction activities or unpermitted units. The next main area of investigation has to do with property maintenance. For all Building and Zoning code violations, the Code Compliance Officer prepares and presents the case which results in a Hearing. In other instances, the Code Compliance Officer will shepherd a case started by another City department but becomes enforceable through Title 1.19. Then, the Code Compliance Officer relies on the evidence and case documentation supplied by other City Staff will invite Staff to the Hearing to provide testimony to verify evidence provided. The Code Compliance Officer provided sample forms and sample Hearing case documentation for reference.

8. **Practical issues and applications**
The Panel decides on the frequency it would like to meet and is encouraged to meet. Everyone gets copies of decisions and all are welcome to attend hearings as they occur as they are open to the public. Notices will be sent to all panel members. The Panel selected Kim Murdock as chair and agreed to have a random draw of members to create the Hearing Officer rotation list. Members will be called by order on the list. Panel members may excuse themselves from particular Hearings for any reason and must excuse themselves if they live too close to the property in question. Conflict maps are provided. The next meeting of the Panel will be called by the Chair through Terri Schaeffer. It will be held on a weekday after 3:00 pm and will be scheduled after January 1, 2013.

9. **Adjournment**
The meeting was adjourned at 3:40 pm.

Respectfully submitted,

Terri C. Schaeffer

This serves as written notice that Pacific Grove Municipal Code Section 1.20.010 incorporates Section 1094.6 of the Code of Civil Procedure of the State of California and provides a ninety-day limitation for judicial review of any final administrative decision by the Council, or any board, commissioner, or officer of the City.