AGENDA

CALL TO ORDER

1. Roll Call
   Beautification and Natural Resources Commission Board Members: Jeanie Anton (Chair), Thom Akeman, Kelly Terry, David Myers, Lindsay Jacob, Colleen Goldsmith, Rebecca Lee

2. Approval of Agenda

3. Approval of Minutes
   a. Approval of March 19, 2018 Meeting Minutes (Attachment 1)
      Reference: Milas Smith
      Recommended Action: Approve minutes

4. Public Comments
   a. Written Communications
   b. Oral Communications
      Comments must deal with matters subject to the jurisdiction of the Commission that are not on the Agenda. Comments from the public will be limited to three minutes and will not receive Commission action. Whenever possible, letters should be submitted to the Commission in advance of the meeting.

5. Presentations

6. Reports Not Requiring Action
   a. Council Liaison Announcements
      Reference: Councilman Nick Smith
   b. Public Acknowledgment

7. Items Requiring Action
   a. Tree Appeal 1059 Jewell Ave. (Attachment 2)
      Reference: Daniel Gho
      Recommended Action: Uphold decision of the City Arborist for Tree Permit #19-0135 denying the removal of one Monterey Pine located at 1059 Jewell Avenue, and deny the Appeal of Nicholas and Theresa Petridis.
   b. Update Single use plastics ordinance (Attachment 3)
      Reference: Milas Smith
      Recommended Action: Recommend the City Council adopt amendments to Ordinance 11.98 and 11.99 for single use plastics and food packaging.
8. Unfinished/Ongoing Business

9. New Business

10. Commissioner’s Reports

11. Staff Announcements
   a. Arbor Day Activities-April 26th
   b. Gull Abatement season April 29th to May 31st 2019
      Reference: Milas Smith
      Recommended Action: Receive announcements

12. Items for Next Agenda

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.
1. Call to order - 3:59pm
2. Roll Call: BNRC Commission Board Members; Jeanie Anton (Chair), Thom Akeman, Kelly Terry, David Myers, Lindsay Jacob, Colleen Goldsmith (absent), Rebecca Lee.
3. Approval of Agenda; Approval unanimous with change of 6a. to Midway Atoll and Birds – Jan Loomis
4. Approval of Minutes from February 2019; Approval unanimous
5. Public Comment; Oral comments - none
6. Presentation
   a. Midway Atoll and Birds – Jan Loomis; counted over 600,000 species of birds. Tremendous plastic gathering on island. Suggestions on what Pacific Grove can do locally to decrease plastic/litter consumption included: refill water stations, smoke free PG, lean on cities and organizations that have been effective in creating policy change.
7. Items Requiring Action
   a. Approval of 2019 BNRC Goals; Approval unanimous (6-0) with change to A.6. to the following: Support wildlife awareness and watch for changes in wildlife populations and support the new wildlife subcommittee/ad-hoc advisory committee. Oral comments: Steve Thomas – ask for George Washington Park BNRC subcommittee to revisit number of trees in possible baseball park expansion. Rudy Fischer – Arbor Day location (Public Works confirmed 2019 Arbor Day will be at Forest Grove Elem. Agenda Item 12.a)
8. Reports Not Requiring Action
   a. Council Liaison – Nick Smith; recapped 2019 City Council goals, announced new Committee and Board handbook, referenced Library Poetry Program, Financial Workshop, and Pine Ave project will be discussed at next Council Meeting.
   b. Public Acknowledgement – Jeanie Anton thanked Public Works for downtown improvements (flowerpots, etc.)
9. Unfinished/Ongoing Business
   a. Update Single Use Plastics ordinance – Jeanie Anton; still a work in progress encouraged continued public input. Confirmed restaurants have been notified and the subcommittee is working the PG Chamber, an event will also take place for public input. Public comment: Lisa Ciani – adding language in for cigarette filters, thanked the subcommittee for efforts. Rudy Fischer – questioned if restaurants have been notified and Chamber involvement.
   b. Update Lovers Point Coastal Access Plan – Council did not approve
   c. Update Shoreline Management – Moving forward smoothly on track for on time completion
10. New Business – none
11. Commissioners Report – Thom Akeman; Harbor Seals update, there have been 0 successful births, fences will go up early April.
12. Staff Announcements – 2nd Arbor Day Event will be held for general public will post information
13. Items for next Agenda
   a. Single Use Plastics Update
   b. Harbor Seal Update
   c. George Washington Subcommittee – commissioner report update
14. Meeting adjournment 4:50pm
TO: Beautification and Natural Resource Commission

FROM: Daniel Gho, Public Works Director; Albert Weisfuss, City Arborist

MEETING DATE: April 16, 2019

SUBJECT: Denial of tree removal at 1059 Jewell

CEQA STATUS: This project has been determined to be EXEMPT under CEQA Guidelines Class 4 s. 15304 Minor Alterations to Land

RECOMMENDATION
Uphold decision of the City Arborist for Tree Permit #19-0135 denying the removal of one Monterey Pine located at 1059 Jewell Avenue, and deny the Appeal of Nicholas and Theresa Petredis.

DISCUSSION
On February 6, 2019 and then subsequently on March 15, 2019 when payment was received, the application for the removal of one Monterey Pine, tree permit application #19-0135, located on the City Right of Way (ROW) at 1059 Jewell Avenue, by the property owner Nicholas and Theresa Petredis, was processed and reviewed.

The City received and began our review of the Monterey Pine within the ROW located between Jewell Avenue and the property located at 1059 Jewell Ave on March 15, 2019. The arborist report prepared by ISA Certified Arborist Joseph E. Bileci specifies that the tree needs to be removed because there is no reasonable way to repair the unusable driveway, the broken and titled retaining wall, and the broken and lifted curb and gutter, without significantly reducing the stability of the tree and creating an unacceptable hazard. His report does not specify that the tree is in poor health, that the tree is showing any signs of stress, and that there is any damage to the root system or crown of the tree. The Hazard Evaluation Report does specify the presence of Red Turpentine Beetles, but the report does not specify if the beetles have posed a hazard to the tree or any specific information pertaining to their presence.

As noted on page 3 of the arborist report it states “Enclosed herewith is a complete Tree Hazard Evaluation Form based on the assumption that necessary roots will have to be cut to repair the driveway and retaining wall. The tree rated a “10” or “11” based on the extent of the necessary root-cutting. Also, on the evaluation form, it states “This evaluation assumes cutting of roots
necessary to repair the driveway, retaining wall and curb.” The evaluation of the tree is based solely on assumptions that the tree must be removed to correct the deficient infrastructure and has been evaluated accordingly.

In addition to the Mr. Bileci’s report the applicant also received a structural engineers report, a property survey, and has provided photographic evidences of the property damage. The complete appeal packet is noted as Attachment 1.

The City Arborist carefully considered the report prepared by Joseph Bileci and performed extensive review of the tree. Here are Al Weisfuss’s Findings (Attachment 2):

a) The tree is healthy with good foliage color and density.
b) The tree is a landmark tree for this neighborhood
c) Extensive beetle activity is not present that would indicate severe stress and / or decline of the tree.
d) No evidence of internal stress or decline is present such as bark fractures, cankers, conks or abnormal swelling
e) No evidence of soil movement indicated by fractures or shifting of the root plate is noted.
f) Damage to the retainer wall can be mitigated with construction of a wall with minimal root disturbance.
g) Removal of the driveway asphalt is required to assess the impacts of roots and determine if there are mitigation alternatives to removal of the tree.

The City denied the removal of the Monterey Pine based on the Joseph Bileci report and the findings of our City Arborist. The City received the appeal from Mr. and Mrs. Petredis on April 1, 2019.

As stated in the City Arborist’s findings, it is the opinion of the City that construction of the retaining wall can occur that will mitigate any impact on the tree. In addition, it appears that the asphalt driveway will need to be removed to make it suitable for use. It is the suggestion of the City to have the driveway removed and then the City Arborist, along with the property owner and their contractor, can review what impacts or mitigations alternatives can be administered, instead of the removal of the tree. If the driveway is removed and it reveals that significant roots will have to be cut to make the necessary repairs, jeopardizing the stability of the tree, then the City can issue new findings and post the tree for removal. We can not base our present findings on assumptions.

This landmark Monterey Pine has stood in this location for years. The damage to the property has occurred over numerous decades with no maintenance or remedial action taken to lesson the impacts of the roots on the property at 1059 Jewell. Based on the determinations of the City Arborist, it is the recommendation of staff that the Beatification and Natural Resources Commission uphold the decision of the City Arborist.

ATTACHMENTS
1. Tree Application 1059 Jewell 19-0135
2. Appeal Packet, including applicant’s arborist report and associated documents
3. City Arborist Findings
4. Notice of Public Hearing Posting

RESPECTFULLY SUBMITTED:

Albert Weisfuss
Public Works Arborist

REVIEWED BY:

Daniel Gho
Public Works Director
CITY OF PACIFIC GROVE
Community & Economic Development Department - Planning Division
300 Forest Avenue, Pacific Grove, CA 93950
Tel: 831.648.3183 • Fax: 831.648.3184 • 
Permit & Request Application for Tree Permit (TP)

Tree Inspection Liability Disclosure: The City shall not be responsible for any damage to property or persons caused by, or related to, trees located on private property. It is the owner's responsibility to maintain all trees on their property in a responsible and safe manner, and any inspection performed by the City is a limited advisory assessment only. For a more thorough inspection, the owner should contact a certified arborist. All tree work within the City of Pacific Grove requires an application to be on file.
A permit will be issued based on the City of Pacific Grove Tree Ordinance 12.20.040 Pruning and Removal of Protected trees.

**Property Address:**
1059 Jewell Avenue, Pacific Grove, California

**Owner:**
Nicholas and Theresa Petredis
Phone: 650.533.5010
E-mail: nicholas@petredis.com

**Applicant:**
Nicholas and Theresa Petredis
Phone: 650.533.5010
E-mail: nicholas@petredis.com

**Tree #**
1
**Type/Species**
Montgomery Pine

**Reason for Request (Please provide brief description. Details may follow in the report):**
This application is being submitted at the request of the City.

**This is a hazardous and dangerous tree on City-owned Property that has caused and continues to cause extensive structural damage to our property and interferes with our ability to use and enjoy our home. The tree creates a dangerous and hazardous condition for anyone who attempts to access our home.**

Is there an active Planning/Building permit for this property?  
☐ Yes  ☐ No

The following conditions must be met prior to any tree removal or trimming:
1. No work is permitted until you have picked up and paid the application fee for an approved permit for tree work.
2. A live tree request for removal requires an arborist report and tree hazard evaluation form completed by a Certified Arborist and submitted with this application.
3. All tree work activity shall comply with the provisions of the PGMC Title 12. Trees and the Urban Forest.
4. A site plan must accompany the application showing the location of the tree to be worked on and the location of replants.
5. Substantial Pruning or Removal of any Protected Tree requires a permit except in an Emergency, in compliance with PGMC 12.20.040
6. All trees to be removed must be marked with a bright ribbon around the trunk of the tree.
7. After the permits have been received and processed, the City Arborist will do a site visit and post the permit at the job site for 10 working days.
8. Any protected tree removed must be replaced with a 1:1 ratio of species approved by the City Arborist within 60 days of removal.
9. Permits expire 60 days after the effective date. The City Arborist may grant up to one extension not to exceed 30 days.

This list is not comprehensive of all conditions that may be required for tree removal and trimming work.

This particular tree permit is Exempt - CEQA Exemption Class 4a.15304 Minor Alterations to Land.

☐ I request to pay in lieu fees ($756/tree) in lieu of replacing trees, in the amount of $______________

☐ Request will be approved or denied by the City Arborist

I have read and agree with the conditions of this application and hereby grant permission for City Personnel to inspect the trees on my property.

I, _______________, authorize _______________ to represent me in the application and processing of this permit.

(Owner Name)  (Agent Name)

Owner Signature

February 6, 2019

Revised 10-1-18
**Tree Evaluation Findings**  
**PGMC 12-16**

Public Hearing Required? Yes [ ]  No [ ]  
Bond Required? Yes [ ]  No [ ]  $______________

HRC [ ]  ARB [ ]  PC [ ]  BNRC [ ]  CC [ ]

**Tree #1**  
Species: Monterey Pine  
DBH: 49”  
HT: 70’  
Live Crown Ratio: 70%  

Site Address: 951 Pine St  
Private [ ]  Public [ ]  Utility Company [ ]

Action Requested: **Remove [X]**  
Trim/Prune [ ]

Target: Building [ ]  Parking [ ]  Traffic [ ]  Recreation [ ]  Landscape [ ]  Utility Lines [ ]

Living Foliage: Yes [ ]  No [ ]

Prune: Remove Limb /s [ ]  Crown Clean [ ]  Raise Canopy [ ]  Crown Reduction [ ]

Remove tree: Yes [ ]  No [ ]  Replant: Yes [ ]  No [ ]

---

**Tree #2**  
Species  
DBH:  
HT:  
Live Crown Ratio: 

Site Address  
Private [ ]  Public [ ]  Utility Company [ ]

Action Requested: **Remove [ ]**  
Trim/Prune [ ]

Target: Building [ ]  Parking [ ]  Traffic [ ]  Recreation [ ]  Landscape [ ]  Utility Lines [ ]

Living Foliage: Yes [ ]  No [ ]

Prune: Remove Limb /s [ ]  Crown Clean [ ]  Raise Canopy [ ]  Crown Reduction [ ]

Remove tree: Yes [ ]  No [ ]  Replant: Yes [ ]  No [ ]

---

**Tree #3**  
Species  
DBH:  
HT:  
Live Crown Ratio: 

Site Address  
Private [ ]  Public [ ]  Utility Company [ ]

Action Requested: **Remove [ ]**  
Trim/Prune [ ]

Target: Building [ ]  Parking [ ]  Traffic [ ]  Recreation [ ]  Landscape [ ]  Utility Lines [ ]

Living Foliage: Yes [ ]  No [ ]

Prune: Remove Limb /s [ ]  Crown Clean [ ]  Raise Canopy [ ]  Crown Reduction [ ]

Remove tree: Yes [ ]  No [ ]  Replant: Yes [ ]  No [ ]

---

Replant Requirements

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Tree Type</th>
<th>Size</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Authorized Signature: ___________________  Date: 3-22-19

Print Name and Title: ___________________  ___________________

An in lieu fee of $_________ is approved representing _____ trees.

[ ] I have complied with this permit and have planted the species and quantities in locations as indicated above.

[ ] I have paid my in lieu fee of $_________ to the City of Pacific Grove Tree Fund.

Signature of owner / agent: ___________________  Date: ___________________
# Project Information

<table>
<thead>
<tr>
<th>Project Address</th>
<th>1059 Jewell Avenue, Pacific Grove, CA 93950</th>
</tr>
</thead>
<tbody>
<tr>
<td>APN</td>
<td>006-122-006</td>
</tr>
<tr>
<td>Application &amp; No.</td>
<td>19-0135</td>
</tr>
<tr>
<td>Applicant Name</td>
<td>Nicholas and Theresa Petredis</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>1059 Jewell Avenue, Pacific Grove, CA 93950</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:nicholas@petredis.com">nicholas@petredis.com</a></td>
</tr>
<tr>
<td>Owner Name</td>
<td>Nicholas and Theresa Petredis</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>1059 Jewell Avenue, Pacific Grove, CA 93950</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:nicholas@petredis.com">nicholas@petredis.com</a></td>
</tr>
</tbody>
</table>

# Action

<table>
<thead>
<tr>
<th>Action</th>
<th>Date of Action</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>March 22, 2019</td>
<td>Removal Permit Application Denial</td>
</tr>
</tbody>
</table>

# Appeal Information

| Appellant Name                           | Nicholas and Theresa Petredis               |
| Mailing Address                         | 1059 Jewell Avenue, Pacific Grove, CA 93950 |
| Email Address                           | nicholas@petredis.com                       |
| Appeal Deadline                         | 5:00 p.m. on                               |

## Appeal Deadline Date

**SEE ATTACHED APPEAL OF DENIAL OF TREE REMOVAL PERMIT AND REQUEST FOR REASONABLE ACCOMMODATION**

If necessary, use additional pages.

# Fees

<table>
<thead>
<tr>
<th>Fees</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discretionary Fees</td>
<td>$</td>
</tr>
<tr>
<td>Appeal Fee = 25% of discretionary fees</td>
<td>$</td>
</tr>
<tr>
<td>Cost of publication of legal notice</td>
<td>$</td>
</tr>
<tr>
<td>Photocopies</td>
<td>copies @ 10¢ each</td>
</tr>
<tr>
<td>Postage</td>
<td>stamps @ 45¢ each</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
</tr>
<tr>
<td>Total Appeal Fee</td>
<td>$198</td>
</tr>
</tbody>
</table>

Appellant Signature: ____________________________________________________________________________

March 28, 2019

Date: ________________________________________________________________________________________

---

1 See Table 23.70.012-1 in the Pacific Grove Zoning Code, which identifies roles of review authorities as they relate to appeals.

2 Whatever fee was collected by the city for the application for use permit, architectural approval, variance, etc., or combination of more than one fee if more than one decision is being appealed.

3 Currently averaging $250-300.

4 Typically the number of address labels for parcels (or portions thereof) found within a 300 ft radius of the subject parcel (350 ft radius for homes in the Asilomar Dunes area) is approximately 120. Mailing is sent to owners and occupants (including most individual apartments) of properties.

Rev. 11/7/12
APPEAL OF DENIAL OF TREE REMOVAL PERMIT AND REQUEST FOR REASONABLE ACCOMMODATION

Re: Denial of Tree Removal Permit Application # 19-0135 regarding the City-owned Monterey Pine Tree in front of 1059 Jewell Avenue (APN: 006-122-006) and Request for Reasonable Accommodation ("Appeal")

My wife and I are the owners of 1059 Jewell Avenue. Please consider this Statement and its exhibits together with, and in support of, the Appeal of the City Arborist’s denial of the above referenced Tree Removal Permit Application submitted on March 15, 2019, and denied on March 22, 2019 ("Permit")

Here is the situation we find ourselves in. It is beyond obvious to anyone looking at our property that the trunk base and root system of the City Tree has caused, and continues to cause, extensive structural damage to our front yard, retaining walls, driveway and the foundation of the house as well. The City focuses exclusively on the protected status of the City Tree but has NEVER explained why the City is absolved from the damage the City Tree has caused and continues to cause to our property.

**Appeal.** We appeal all of the reasons cited by the City Arborist for denial of the Permit as outlined in this Appeal below.

However, in particular we appeal because the City is required under PG Municipal Code Section 12.20.040(a)(2) - Pruning and Removal of Protected Trees -- to permit removal of the City Tree. The Ordinance reads:

(a) Substantial Pruning or Removal of any Protected Tree requires a permit, as described in Chapter 12.60 PGMC (Permit Application and Processing), except in an Emergency. All such work shall be done under the direction of the city arborist. A Tree that serves as part of a windbreak system, or assists in storm water drainage or the avoidance of soil erosion, or serves as a component of a wildlife habitat, is to be preserved if Feasible. Acceptable criteria for Substantial Pruning or Removal of any Protected Tree are as follows:

(1) The tree risk assessment level is "high" or "extreme" (see PGMC 12.40.020 (Actions to be undertaken for dead Trees and Trees assessed as High-Risk)) and there are not more cost-effective remedial solutions.
(2) The Tree is causing or is projected to cause significant damage to
hardscape (house foundations, driveways, retaining walls, patios, etc.), utility
service lines, or infrastructure (sidewalk, curb, storm drain, Street, etc.) and
there are not more cost-effective remedial solutions. ("Ordinance")

The damage caused by the City Tree is a recitation of the circumstances in
the Ordinance that require the removal of a protected tree. The City Arborist
ignored the plain meaning and direction of the City's Ordinance. As for other
"cost-effective remedial solutions" qualifier in the Ordinance, the substantial
evidence set forth in this Appeal demonstrate there is no cost-effective remedial
solution. Again, the City Arborist erred in not applying the standards of the
Ordinance the application.

**Background.** Our Appeal concerns an application to remove the
Monterey Pine ("City Tree") on Jewell Avenue, immediately in front of our
property. While the City Tree’s roots are entirely on the City’s property, inches
from our property line, a substantial part of its root system (as much as 50%)
extends onto our property. The health and stability of the City Tree is therefore
dependent on the continued use of our property.

We have no ownership rights in the City Tree.

In addition to the supporting documents and pictures attached to this
Appeal, the extensive structural damages caused to our property by the City Tree
are obvious to anyone. The City Tree has caused and continues to cause
significant structural damage to our property. The retaining wall supporting our
front yard has been destroyed and rendered non-functional. The retaining walls
along the driveway are also destroyed. The driveway is not usable. In fact, we
are incurring monthly costs to store a vehicle because it cannot use the driveway
to get into the garage. The foundation of the house has and will continue to be
impacted from roots that cannot be uncovered without further destroying our
property. All of this damage denies us our statutory and case law rights to the
use and enjoyment of our house and property.

In support of this Appeal, we submit the following documents: an
Arborist’s Report prepared by Joseph Bileci, dated November 27, 2018, attached
hereto as **Exhibit A**; a Structural Engineer’s report prepared by Christian Lee,
dated November 13, 2018, attached hereto as **Exhibit B**; a Property Survey
(showing the subject tree is on City property) prepared by Whitson Engineers,
dated October 17, 2018, attached hereto as **Exhibit C**; and, photos of the
structural damage caused by the tree to our property attached hereto as **Exhibit
D**. In addition, to those documents I make a Request for Reasonable
Accommodation as describe in **Exhibit E**.
Reservation of Rights. Initially we note two points for the administrative record.

First, the City Arborist determined the City Tree is providing a public benefit to the City because the City Tree is a “landmark tree for this neighborhood.” That means the City Tree is a public improvement serving the public purpose of furthering the City’s urban forest goals and regulations.

Second, we submitted the Tree Removal Application under duress by City Staff as we saw no reason why we should be required to apply for a Tree Removal Permit for a tree that is not on our property but is in fact using and damaging our property. We submitted the application after being ignored by the City, being given erroneous information and being given contradictory information since November of 2018. At every opportunity we requested meetings and made clear statements that our strong preference was to reach an amicable solution to the problem. Our requests were met with silence, all of them. Out of desperation and in the spirit of compromise we submitted the Tree Removal Application. To be clear we also did so to remove any doubt that we pursued and exhausted all of our administrative remedies. We pursue this Appeal on the same basis.

We disclaim any responsibility for the City Tree and we expressly do not waive any rights we have regarding the Notice of Claim we previously filed and was denied by the City on January 3, 2019. We reserve all rights to pursue our claims for the City’s deliberate and unconstitutional use of our property.

City Arborist’s Reasons for Denial. The City Arborist listed seven (7) findings for denying the Tree Removal Application:
1. The tree is healthy with good foliage color and density.
2. The tree is a landmark tree for this neighborhood.
3. Extensive Beetle activity is not present that would indicate severe stress and/or decline of the tree.
4. No evidence of soil movement indicated by fractures or shifting of the root plate is noted.
5. Damage to the retainer (sic) wall can be mitigated with construction of a wall with minimum root disturbance.
6. Removal of the driveway asphalt is required to assess the impacts of roots and determine if there are mitigation alternatives to removal of the tree.

Each of the arborist’s reasons are wrong and/or deficient, and he failed to include specific findings to support his reasons as follows:

1. The tree is healthy with good foliage color and density. The City Arborist makes a statement completely unsupported by any evidence. Just one example is
no aerial survey was conducted so there is no substantial evidence that the City Tree is indeed “healthy” from top to bottom. In our Arborist Report, it is noted the City Tree has been “excessively thinned” and the crown is “over-mature/senescent” – in other words, an elderly tree on the decline. He also noted the City Tree has “long, large limbs with heavy end weights” with “multiple attachments”. Our Arborist notes the City Tree’s health is normal and average…the adjective “good”, used by the City Arborist, is a conclusion unsupported by facts, designed to be misleading at best.

The City Arborist also fails to note a significant fact in our favor and that is the City Tree leans towards our house and that the “good foliage” is weighted in the same direction – directly at our house, thus creating a dangerous condition. The City Arborist omits this fact apparently because it would require him to assess the danger posed by the tree to us and our neighbors.

2. The tree is a landmark tree for this neighborhood. The City Arborist’s finding that the City Tree is a “landmark tree” means it serves as a public benefit to the City.

3. Extensive Beetle activity is not present that would indicate severe stress and/or decline of the tree. Our Arborist’s report noted the presence of Red Turpentine Beetles as a major pest/disease. The City Arborist either did not notice this or chose to omit this fact to support his conclusion.

4. No evidence of soil movement indicated by fractures or shifting of the root plate is noted. This is indeed an astounding finding that boggles the mind. To even the casual observer, let alone a trained Arborist, it is obvious there has been a tremendous amount of soil movement (the destruction of the retaining walls and driveway), and it continues to get worse. It requires a willing suspension of disbelief to ignore the facts on the ground. The City Arborist cites no facts let alone substantial evidence to support his finding.

5. Damage to the retainer (sic) wall can be mitigated with construction of a wall with minimum root disturbance. This conclusion is unsupported by any evidence, let alone substantial evidence. The City Arborist is not a civil or structural engineer to our knowledge, therefore he could be forgiven for not knowing the basic purpose of a retaining wall. The most basic definition of a retaining wall is that it is a wall that holds back earth or water. Essential to that function is a stout foundation. After inspecting the situation, our qualified structural engineer opined that the existing retaining wall is “completely destroyed and nonfunctional”. So common sense and engineering expertise rules out a retaining wall with “minimum root disturbance”. The roots along the entire retaining wall on our property have to be cut so as to rebuild a suitable foundation to support a retaining wall that will serve to hold back our front yard.
from collapsing onto Jewell Avenue.

6. Removal of the driveway asphalt is required to assess the impacts of roots and determine if there are mitigation alternatives to removal of the tree. If you had never visited the property this recommendation might make sense, but it does not hold up to basic scrutiny. The fact is there is so little of the asphalt left because the roots have destroyed the surface of the driveway that the entire root system is visible to the naked eye. If the City Arborist was serious about this recommendation he would have explained why more roots need to be exposed/disturbed when he can see all that is necessary to make a recommendation about what, if any, roots can be cut that would not impact the stability of the City Tree.

He knows, or should know, the root system of the Monterey Pine is shallow-rooted so there is nothing to see below what he can already see. Our opinion is this recommendation is just one more calculated bureaucratic delay to cost us time and money for a frivolous purpose, and/or as punishment for having the temerity to ask for relief from a protected tree destroying our property. This recommendation is punitive, unwarranted, unsupported by substantial evidence and is discriminatory on its face.

Not Addressed in the City Arborist’s Decision.

No statutory or case law authority cited to absolve the City from liability for the damages caused to our property by the City Tree. The City Arborist cites no statutory, regulatory and/or case law authority that would relieve the City of Pacific Grove from liability for the structural damage caused to our property by the City Tree. None. The issue is totally ignored by the City Arborist. That is a fatal flaw in his decision.

Bridging the roots in the driveway is not an option. On this point, our engineer opined that bridging the roots would be an unacceptable solution because the driveway will then be too steep and the approach angle will prevent transition from the driveway to Jewell Avenue. This is not even to mention my coping with a steeper driveway with my disability and my mother in law her walker. The alternative of cutting “some” roots as the City Arborist suggests will surely weaken the City Tree thus increasing the hazard rating. Fortunately we have a real idea of what would happen if that were actually attempted. Our Arborist projected a Hazard Rating of 10 or 11 depending on what roots were cut. That is an unacceptable, stupid risk.

Request for Reasonable Accommodation. The City Arborist failed to address my request for reasonable accommodation for relief from certain ordinance provisions. This is discriminatory on its face. My daily life will be
impacted and made more dangerous because of his choice to ignore my disabilities. There is ample evidence that this City Tree is in the wrong place and that it will continue to cause more damage to our property. It not only denies us the use and enjoyment of our property, it forces me to navigate conditions that exacerbate my disabilities.

Let’s be charitable and grant that all of the City Arborist’s considered opinions to fix our retaining wall with minimum damage to the roots and bridge the driveway roots (never mind we would not be able to use the driveway), the ongoing damage would go on unabated and only become worse. At what point does the City agree to use its discretion in a reasonable way as the City’s ordinances contemplate?

Renewal of Request for Reasonable Accommodation. Please consider this to be a renewal by me, Nicholas Petredis, for a reasonable accommodation under PG Ordinance Chapter 23.81. I submit information required by that provision as Exhibit E. In summary, my request is for relief from the provisions of Title 12, Trees and the Urban Forest, particularly, but not limited to, those set forth in Ord. 12.20.040 Pruning and Removal of Protected Trees, that would prevent the City from removing the City Tree.

Finally, in making its decision the Commission should be aware of the following facts:

Driveway. According to the Structural Engineer’s report, the roots of the City Tree have uplifted and raised our driveway to such an extent that it is not functional. The roots of the City Tree effectively act as street-type curbs to block access by a typical vehicle. Hence we are denied the use of our garage, driveway and all access to our house is severely compromised. Pictures showing the damage are attached in Exhibit D-1. The City Arborist’s decision does not refute this opinion.

Retaining Walls and House Foundation. The Structural Engineer further opines that the lower retaining wall fronting Jewell Avenue is completely destroyed and is not functional. The roots of the City Tree have uplifted and completely broken the concrete retaining wall facing Jewell Avenue in several places, causing it to tilt outward. The roots of the City Tree have also have uplifted and destroyed the adobe retaining wall on the Western side of the driveway. We fear the roots have reached the foundation of the house, or will in a relatively short period as the Structural Engineer notes, which will compromise the entire foundation under the front of the house. Pictures showing the damage are attached in Exhibit D-1. The City Arborist’s decision does not refute this opinion.
Damage to City Property. It is also a fact the City Tree has caused and continues to cause damage to the concrete drainage swale and the asphalt surface of Jewell Avenue. That damage creates hazardous conditions for pedestrians and bicyclists. This dangerous condition will quickly become more dangerous in a short period of time if not permanently corrected. Please consider this to be notice of the dangerous condition of the City’s property. Pictures showing the damage to public property on Jewell Avenue are attached in Exhibit D-2.

ADA Access. The condition of our driveway and the City’s property presents an immediate hazard to pedestrian, bicycle, and assisted walking access and egress from our residence. This is an added concern not only for my access (as described in the ADA Request for Reasonable Accommodation) but also especially because my wife’s 87-year old elderly mother who has great difficulty walking, and only with a walker, will be living in the residence as well. The same is true for guests, invitees, workers – basically anyone who comes on the property. Aside from the City’s liability regarding the hazardous conditions on Jewell Avenue and our driveway, of greater concern is the difficulty first responders in an ambulance, fire truck or other emergency vehicle would have accessing our residence, particularly during egress while rendering first aid or CPR, potentially losing life-saving moments. See pictures in Exhibit D. The City Arborist’s decision does not refute this opinion.

Alternatives to Removal of the City Tree. According to the report of structural engineer Christian Lee of Structural-E, Inc., there is no practical method of repairing the driveway, street entrance and retaining walls, without removing the roots that are causing the damage and any other roots within the necessary base preparation area for a new driveway and the necessary foundation area for new retaining walls. If the driveway is not repaired, or is prevented by the City from being repaired, we will not have access to our property. If the retaining walls are not repaired we will lose our front yard. The City Arborist’s decision does not refute this opinion.

This Appeal is our last resort and was carefully considered after exploring all possible alternatives. Given the slope, area and configuration of our property, it is impossible to relocate the driveway so as to not necessitate cutting the roots of the City Tree. Here is why.

Arborist Survey. The Arborist’s report and the Structural Engineer’s report both opine that the effect of exposing and cutting the roots will only create more serious concerns for us and our neighbors. This is why.
The Arborist report educates us that the root systems of most trees resemble broad, relatively shallow platforms, as opposed to deep anchorages. As a general rule, the root systems of almost all trees are located primarily within thirty inches (30") of the ground surface. Some trees have roots that extend deeper, depending on soil and water table depths. Roots usually extend radially to the drip line, but a more reliable rule-of-thumb is to assume that they extend to about 15 times the diameter of the trunk in each direction. The outer two-thirds of the root radius is the feeding zone where roots are finely divided into root hairs which absorb water and minerals. The percentage of loss of this feeding zone is significant in determining the consequence of soil disturbance and root cutting. **The inner third is composed mostly of conducting roots, the loss of which will affect large portions of the feeding zone and the stability of the tree.**

It is plain to see our driveway location is actually over the **inner third of the root radius** of the City Tree. Therefore, the root cutting that will be required to repair the driveway will include conducting roots close to the tree, as well as feeding roots, and will thus affect not only the health, but the stability of the City Tree. The Arborist opines regarding tree health that the Monterey Pine is less tolerant of root-cutting than, for example, a Coast Live Oak (Quercus agrifolia).

The inescapable result is in order for us to have access to our house, to prevent certain additional damage in the future and to address my ADA issues, the root-cutting required to repair and replace the driveway and retaining walls would affect 30% - 50% of the root system. The loss of that much of the root system would be a significant shock to the City Tree. Moreover, any proposed cutting will result in large wounds exposing the trunk and root tissue to decay, thereby increasing the likelihood of root failure. Meanwhile, the damages caused by the ongoing trespass and encroachment of the roots onto our property will continue.

Finally, given everyone would know the City Tree was compromised; the liability of a destabilized tree in a high wind or storm event greatly concerns us, our neighbors and we would like to believe that the City shares this concern for the safety of its residents. The City Arborist’s decision does not refute this opinion.

**Alternatives and Tree Hazard Evaluation.** The question will no doubt be asked, as we did, what are the risks of cutting some roots, bridging the rest in the driveway and then monitoring the City Tree. Our Arborist concluded the reduced stability of the Tree, **even if it recovered temporarily,** would be a
major concern. The removal of the large anchoring and buttressing roots around at least a third of the circumference of the City Tree would put the stability of the City Tree at great risk.

Our Arborist’s report includes a Tree Hazard Evaluation Form based on the assumption that the necessary roots had been cut to repair and replace the driveway and retaining walls. The Arborist’s risk assessment comes in at a level of 10 or 11 depending on the amount of root and trunk cutting. We, and our neighbors, do not want to live with a foreseeable and extremely dangerous condition. We do not think it prudent or wise to create an extremely hazardous condition especially given the City’s past history with dangerous trees. To do so would create liability not only for us but also for the City. The City Arborist’s decision does not refute this opinion.

In this situation, the inescapable fact is there is no reliable means to ensure the safety of us, or our neighbors, or someone just passing by the property from being injured due to a falling limb or the entire tree. Given the City’s experience of delaying the inevitable with other trees in the City, the only responsible and safe solution is to remove the City Tree. Our neighbors are in complete support of removing the City Tree. The general consensus is the City Tree creates great anxiety and real fear about the danger of limbs falling or the entire tree falling over.

Finally, let’s presume the City refuses to remove the City Tree and instead recommends bridging and cutting some roots. The City is still responsible for correcting the damages to our property. But let us also assume the City Tree survives whatever root cutting is “approved” and the damages are corrected, the tree will continue to grow and our driveway and retaining walls will continue to be further destroyed. The tree will always be a ticking time bomb for us and our neighbors as the root system will have been compromised. On balance, the ongoing financial harm and risk of hazardous conditions caused by not removing the City Tree is far greater than making the decision to remove it. To determine otherwise would be a gross misuse of discretion and a fatally flawed reading of the City’s own ordinances.

To be crystal clear, our first choice to reach a mutually agreeable reasonable resolution of this situation. City Staff works for you and us, not the other way around. You as Commissioners have the discretion to evaluate Staff’s recommendations and reach a different conclusion. We hope that you do in this case and that you reverse the decision of the City Arborist.
However, if you do not please be advised the City can face a myriad of claims including but not limited to the following:

**Nuisance.** Clearly, if the City Tree is not removed, its presence would constitute a nuisance under *Civil Code* 3479. The statute's definition of a nuisance is: "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an [obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property], or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." (Emphasis added.) The City Tree denies us the comfortable enjoyment of our lives and property. Worse, it creates hazardous conditions to us and the public that must be immediately corrected.

**Trespass and Encroachment.** It cannot be disputed that the roots of the City Tree system constitute a continuing trespass and encroachment on our property.

**Inverse Condemnation.** If the City does not permit the removal of the City Tree and it continues to be a nuisance and hazard, to trespass and encroach, those deliberate, knowing actions would constitute an inverse condemnation of our property by the City for a public benefit. The use of our property by the tree’s root system is necessary for the tree to remain standing. Therefore, the City Tree’s root system constitutes an unlawful use of our property which in itself rises to the level of constitutional takings in violation of the Fifth Amendment of the United States Constitution. The Fifth Amendment of the United States Constitution includes a provision known as the Takings Clause, which states that "private property [shall not] be taken for public use, without just compensation." While the Fifth Amendment by itself only applies to actions by the federal government, the Fourteenth Amendment extends the Takings Clause to actions by state and local government as well.

Additionally, under the California Constitution, Art 1, Section 19, subdivision (a): *Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.* Thus also under the California Constitution the root system of the City Tree constitutes an unlawful taking of our property.
Civil Rights Violation. If the City chooses to ignore all of the above facts and plain evidence, plus my request for reasonable accommodation, those intentional acts would deny us our rights under common, statutory and constitutional law to the extent the City would be violating our civil rights under 42 U.S. Code Section 1983. Ignoring the facts of our Appeal, especially in the absence of substantial evidence to the contrary, of which none has been presented, would be a gross misuse of a public official’s discretion. For that reason, a violation of Section 1938 carries with it personal liability for public officials who are actually acting not in their official capacity but rather in an individual capacity.

We are well aware of the policies, goals and history of the City with protected trees. However, the City also has a duty to exercise its discretionary power to balance the application and enforcement of its ordinances to a particular set of facts. Common sense dictates the only viable short and long-term solution is to approve the removal of the City Tree so that the damage caused by the City Tree can be repaired and we can use and enjoy our property.

We implore you Commissioners to consider that on balance, the unique circumstances surrounding our Appeal and my ADA request warrant removal of the City Tree.

Nicholas P. Petredis
Theresa L. Petredis

Dated: March 28, 2019
EXHIBIT A

ARBORIST'S REPORT
November 27, 2018

Nick and Theresa Petredis
1059 Jewell Avenue
Pacific Grove, CA 93950

RE: Evaluation of Monterey Pine Adjacent to 1059 Jewell Avenue, Pacific Grove, California

Dear Mr. and Mrs. Petredis:

I recently inspected one Monterey Pine (Pinus radiata) tree (hereafter, the “Tree”) located immediately adjacent to the northern boundary line of your residence at the above address. According to the enclosed survey by Whitson Engineers, the Tree is on City of Pacific Grove property.

PURPOSE OF INSPECTION

The trunk base and root system of the Tree has caused extensive damage to your property. The roots have uplifted and raised your driveway to such an extent that it is effectively unusable. As a further result, the driveway now presents a hazard to pedestrian access and egress from your residence. This is an added concern, especially because one resident has difficulty walking. Further, the roots have uplifted and broken the concrete retaining wall in several places, causing it to tilt outward and preventing it from retaining the soil in your front yard. You asked me to evaluate the possible mitigation of this damage from an arborist’s perspective. The following are my findings (measurements are approximate):

INSPECTION RESULTS

Root Damage to Driveway and Retaining Walls.

The Tree is 49” in diameter, 90’ in height, with a foliage spread of 85’. The outer trunk is within 12” of your retaining wall and 4’ of your
driveway. The roots have cracked and uplifted your driveway and street entrance over an area extending 38' back from Jewell Avenue. (See attached photographs)

According to the accompanying report by structural engineer Christian Lee of Structural-E, Inc.: "The lower tier concrete retaining wall and the driveway are completely destroyed and are not functional. The uplifting forces of the growing roots cannot be slowed from ultimately reaching the house perimeter foundation without destroying parts of the tree’s root system. There will be significant loss of vertical stability if a partial system of roots is destroyed—a very dangerous and potentially deadly situation may result from any modifications or destruction of the root system.” Mr. Lee discounts the possibility of floating a concrete slab over the existing roots in the driveway, a potential temporary solution, because it would create an almost 8" to 10" differential elevation between the street curb and the beginning of the drive-way and "it is impossible to create a working transition to the elevated drive-way since a large root is expanding right at that point.” Mr. Lee also points out that this would create a downhill slope into the garage and necessitate new drainage systems, and further states his professional opinion “that these tree roots will eventually cause major damages to the SFD foundation and structure.”

Thus, there is no practical method of repairing the driveway, curb, street entrance and retaining walls, without removing the roots that are causing the damage and any other roots within the necessary base preparation area for a new driveway and the necessary foundation area for new retaining walls.

Tree Stability After Necessary Root Cutting.

The effect of exposing and cutting these roots is a primary concern. The root systems of most trees resemble broad, relatively shallow platforms, as opposed to deep anchorages. As a general rule, the root systems of almost all trees are located primarily within thirty inches of the ground surface. Some trees have roots that extend deeper, depending on soil and water table depths. Roots usually extend radially to the drip line, but a more reliable rule-of-thumb is to assume that they extend to about 15 times the diameter of the trunk in each direction. The outer two-thirds of the root radius is the feeding zone where roots are finely divided into root hairs which absorb water and minerals. The percentage of loss of this feeding
zone is significant in determining the consequence of soil disturbance and root cutting. The inner third is composed mostly of conducting roots, the loss of which will affect large portions of the feeding zone and the stability of the tree.

Accordingly, the proposed root cutting will include conducting roots close to the tree, as well as feeding roots, and will thus affect not only the health, but the stability of the Tree. Regarding tree health, the Monterey Pine is less tolerant of root-cutting than, for example, a Coast Live Oak (Quercus agrifolia). In this case, the root-cutting required to repair and replace the driveway, retaining wall and curb would affect 25% - 50% of the root system. The loss of this much of the root system would be a significant shock to the Tree. It is possible that the Tree would survive the initial shock, but would gradually decline and eventually die as a result. However, it is also possible that it would survive the shock from a health perspective.

Unfortunately, the reduced stability of the Tree, even if it recovered, would be a major concern. The cutting of large anchoring and buttressing roots around approximately one third of the circumference of the Tree would put the stability of the Tree in question. Moreover, the necessary root-cutting will result in large wounds exposing the trunk and root tissue to decay, thereby increasing the likelihood of root failure. Additionally, the Tree has a slight but distinct lean to the southeast (toward the neighboring residence at 1031 Jewell) and the foliage is heavily weighted in this direction. Further, the crown has been raised in the past, increasing the top-heaviness and susceptibility of the Tree to uprooting.

Enclosed herewith is a completed Tree Hazard Evaluation Form based on the assumption that the necessary roots have been cut to repair and replace the driveway and retaining walls. The Tree Hazard Evaluation Form rates hazards on a scale of 1-12, with 12 being the most hazardous trees. The Tree rated a "10" or "11" depending on the extent of the necessary root-cutting. Also enclosed are photographs of the tree, and the damage caused by the roots.

Criteria for Tree Removal Under the Pacific Grove Municipal Code

Pacific Grove Municipal Code Section 12.20.040 provides, in pertinent part:
"Acceptable criteria for Substantial Pruning or Removal of any Protected Tree are as follows: "(2) The Tree is causing or is projected to cause significant damage to hardscape (house foundations, driveways, retaining walls, patios, etc.) utility service lines, or infrastructure (sidewalk, curb, storm drain, street, etc.) and there are not more cost-effective remedial solutions."

Pacific Grove Municipal Code Section 12.20.040 also provides the following acceptable criteria for Substantial Pruning or Removal:

"(1) The tree risk assessment level is "high" or "extreme" (see PGMC 12.40.020 (Actions to be undertaken for dead Trees and Trees assessed as High-Risk) and there are not more cost-effective remedial solutions." PGMC 12.40.010 provides that a tree is in the High Risk category if it has a potential failure rating of nine or higher.

CONCLUSION

Based on the foregoing, there is no reasonable method of repairing the unusable driveway, the broken and tilted retaining wall, and the broken and lifted curb and gutter, without significantly reducing the stability of the Tree and creating an unacceptable hazard. Accordingly, it is recommended that the Tree be removed and replaced with a tree species acceptable to the City Arborist.

Thank you for the opportunity to provide this report. Please contact me if you have any questions or I can be of further assistance.

Very truly yours,

Joseph Bileci Jr.

Joseph Bileci Jr.

Enclosures
A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas

TREE HAZARD EVALUATION FORM

Site/Address: 1059 Jewell Avenue
Map/Location: Pacific Grove, CA 93950
Owner: public
Date: 10/17/18
Date of last inspection: Unknown

TREES CHARACTERISTICS

Tree #: 1
Species: Monterey Pine (Pinus radiata)
DBH: 49" 
# of trunks: 1
Height: 90' 
Spread: 85' 

Form: 
Crown class: 
Live crown ratio: 55% 
Age class: 
Pruning history: 
Approx. dates: Unknown

TREES HEALTH

Foliage color: 
Foliation density: 
Annual shoot growth: 
Woundwood development: 
Vigor class: 
Major pests/diseases: Red Turpentine Beetle (Dendroctonus valens)

SITE CONDITIONS

Site Character: 
Landscape type: 
Irrigation: 
Recent site disturbance? 
% drripline paved:
% drripline w/ fill soil:
% drripline grade level:

Obstructions: 
Exposure to wind: 
Prevailing wind direction: 
Occurrence of snowfloe storms: 

TARGET

Use Under Tree: 
Can target be moved? 
Can use be restricted? 
Occupancy: 

The International Society of Arboriculture assumes no responsibility for conclusions or recommendations derived from use of this form.

NOTE: This evaluation assumes cutting of roots necessary to repair driveway, retaining wall and curb.
# TREE DEFECTS

**1059 Jewell Avenue, Pacific Grove, CA 93950**

**ROOT DEFECTS:**
- Suspect root rot: ☐ N Mushroom/conk/branch present: Y ☐ ID: NA
- Exposed roots: ☐ severe ☐ moderate ☐ low Undermined: ☐ severe ☐ moderate ☐ low
- Root pruned: 1' - 1' distance from trunk Root area affected: 25-50% Buttress wounded: ☐ N When: Recent
- Restricted root area: ☐ severe ☐ moderate ☐ low Potential for root failure: ☐ severe ☐ moderate ☐ low depending on extent of necessary root cutting
- Decay in planes of team: ☐ N Roots broken: ☐ N Soil cracking: ☐ Y
- Compounding factors: Lien toward neighboring residence foliage heavily weighted in that direction Lean severity: ☐ severe ☐ moderate ☐ low between

**CROWN DEFECTS:** Indicate presence of individual defects and rate their severity (s = severe, m = moderate, l = low)

<table>
<thead>
<tr>
<th>DEFECT</th>
<th>ROOT CROWN</th>
<th>TRUNK</th>
<th>SCAFFOLDS</th>
<th>BRANCHES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foot taper</td>
<td>L</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bow, sweep</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Codominants/forks</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multiple attachments</td>
<td></td>
<td>M</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Included bark</td>
<td>L</td>
<td>M</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excessive end weight</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cracks/splits</td>
<td>Y ☐ N</td>
<td>M-S</td>
<td>M</td>
<td></td>
</tr>
<tr>
<td>Hangars</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Girdling</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wounds/scarf</td>
<td>M</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decay</td>
<td>Unknown</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cavity</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conks/mushrooms/branch</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bleed/mg/p flow</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loose/cracked bark</td>
<td></td>
<td>M</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nesting holes/bee hive</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deadwood/stubs</td>
<td>L</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Borers/Termite/ants</td>
<td></td>
<td>M</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cankers/galls/burls</td>
<td>NA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Previous failure</td>
<td>L</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**HAZARD RATING**
Failure potential depends on extent of necessary root cutting

- Tree part most likely to fail: Roots
- Inspection period: ☐ annual ☐ biannual ☐ other ☐ NA
- Failure Potential + Size of Part + Target Rating + Hazard Rating
  - 2 x 0.3 + 4 + 4 = 10 or 11

**HAZARD ABATEMENT**
- Prune: ☐ remove defective part ☐ reduce end weight ☐ crown clean ☐ thin ☐ raise canopy ☐ crown reduce ☐ restructure ☐ shape NA
- Cable/Brace: NA
- Inspect further: ☐ root crown ☐ decay ☐ aerial ☐ monitor NA

- Remove tree: ☐ N ☐ Replant? ☐ Y ☐ Move target: Y ☐ Other: Replace with tree approved by City Arborist
- Effect on adjacent trees: ☐ none ☐ evaluate ☐ Increased sunlight wind
- Notification: ☐ owner ☐ manager ☐ governing agency ☐ Date: 10/17/18

**COMMENTS**
Large Monterey Pine; excessively thinned in past; long, large limbs with heavy end weight; multiple attaching roots; foliage weight much heavier on SE side; slight lean to SE; roots destroying driveway, retaining wall and curb; loss of 25%-30% root system; this evaluation assumes cutting of roots necessary to repair driveway, retaining wall and curb.
EXHIBIT B

STRUCTURAL ENGINEER'S REPORT
November 13, 2018

Mr. Nicholas Petredis, Esq
nicholas@petredis.com
650.533.5010

Re: 1059 Jewell Avenue, Pacific Grove, CA 93950

Structural Engineer Observations and Recommendations

Christian Lee for Structural - E, Inc. has completed an on-site structural observation on October 30, 2018.

I have been retained to provide the following structural assessment(s):

1. Client has expressed concern regarding large tree roots expansion and destruction of a site concrete retaining wall and an unusable drive-way via root’s upheaval forces.

Conclusions and Recommendations

This is a limited inspection based on visible evidence readily available during the inspection. The Engineer will use his skill and judgment to provide an informative and unbiased report, no inspection can reveal every detail of a structure of interest. The verbal and written reports are not guarantees or warranties of the condition of the buildings or grounds.

I have performed a visual structural observation for the above-mentioned SFD (single family dwelling) site retaining walls and a nonfunctioning asphalt drive-way. The lower tier concrete retaining wall and the drive-way are completely destroyed and are not functional. The up-lifting and expanding forces of the growing roots cannot be slowed from ultimately reaching the house perimeter foundation without destroying parts of the tree’s root system.

There will be significant loss of vertical stability if a partial system of roots is destroyed – a very dangerous and potentially deadly situation may result from any modifications or destruction of the root system.

The root’s directional growth is visually towards the house. The fingers of the roots are 3 to 5 feet away from the garage front door. It is inevitable that without destroying parts of the root system, the SFD foundation system will be fully and negatively affected.

There are some alternative construction options of bridging and/or floating structural elements over the roots, this will have severe financial consequences. A completely different deep foundation system for the SFD will have to be built to overcome nature’s forces at play. The site retaining wall will have to be replaced by a non-conventional retaining wall system and finally, a slab will have to float over the expanding and thickening roots by overlaying 3” to 4” of polystyrene sheets over the entire drive-way (albeit this will still be a temporary solution). This will create an almost 8” to 10” differential elevation between the street curb and the beginning of the drive-way. It is impossible to create a working transition to the elevated drive-way since a large root is expanding right at that point. In addition, there will be a negative (downhill) slope into the garage which in turn, will initiate new drainage systems to be constructed.

It is my professional opinion that these tree roots will eventually cause major damages to the SFD foundation and structure.

Please contact me at 831.424.9000, if you have any questions.

Sincerely,

[License stamp]

Christian K. Lee, PE, EoR
EXHIBIT C

WHITSON ENGINEER'S SURVEY
NOTE ON SURVEY AND TITLE:

The title report specifically calls out that our property goes to the "southerly line of Jewell Avenue", which means we do not have any vested right over Jewell. Our property also is entirely within Block 344, attached, which shows a 60’ right of way for Jewel Avenue.

Map 3-cities and towns at page 13 specifically dedicates Jewell Avenue for public right of way.
EXHIBIT D

PICTURES OF PROPERTY DAMAGE
EXHIBIT D

PICTURES OF PROPERTY DAMAGE

D-1 1059 JEWELL AVENUE DAMAGES
EXHIBIT D

PICTURES OF PROPERTY DAMAGE

D-2 DAMAGE TO JEWELL AVENUE
EXHIBIT E

REQUEST FOR REASONABLE ACCOMMODATION
REQUEST FOR REASONABLE ACCOMMODATION

CHAPTER 28.81: REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

23.81(b) Application Submittal:

(I) Any person with a disability, or his or her representative, may request reasonable accommodation on a form supplied by the community and economic development department. The request shall include the following information, and be accompanied by a fee established by resolution of the city council:

(A) The applicant’s or representative’s name, mailing address and daytime phone number:
   Nicholas P. Petredis
   1059 Jewell Avenue
   Pacific Grove, CA 93950
   (650) 533-5010
   nicholas@petredis.com

(B) The address of the property for which the request is being made:
   1059 Jewell Avenue

(C) The specific code section, regulation, procedure or policy of the city from which relief is sought:
   Relief from the provisions of Title 12, Trees and the Urban Forest except for those set forth in Ord. 12.20.040 subsections (1) and (2) that would prevent the City from removing the City Tree and to also repair all of the damage caused by the City Tree.

(D) A site plan or illustrative drawing showing the proposed accommodation;
   See attached Survey prepared by Whitson Engineers attached as Exhibit C to the Notice of Claim

(E) An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant’s use and enjoyment of the subject property;
   I am a disabled veteran diagnosed by the Veterans Administration (VA) with Post Traumatic Stress Syndrome (PTSD) and severe back problems. The anxiety and fear caused by the City Tree exacerbates my PTSD to the extent that I cannot live in my property. The condition of the driveway has caused me to fall multiple times which has aggravated my back injury and my hips (both of which have been replaced).

   Additionally, the health of my wife’s mother is declining to the extent we plan to have her live with us in the house. However, given her mobility issues, the driveway providing her access is unusable in its present condition, and if the driveway were to be bridged to cover the exposed roots, the steepness of the driveway would be a dangerous
condition for her and me. Finally, the condition of the driveway prevents access by ambulances for emergencies, and if the roots in the driveway were to remain by being bridged, the steepness would present a hazard to first responders and their ability to render effective treatment in an emergency.

**(F)** The basis for the claim that Fair Housing Laws apply to the individual(s) and evidence satisfactory to the city supporting the claim. Evidence may include a supplement from a medical doctor or other licensed health care professional, a disabled license, or any other relevant evidence; Please see the attached Disability Rating from the VA.

**(G)** A detailed explanation as to why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the city: I have a visceral fear of the tree falling into my house and dropping a limb on me or my wife. I am consumed with the fear of death and the City Tree causes it. If the tree remains I will not be able to use my house as any amount of time spent around the City Tree causes extreme stress which makes my PTSD much, much worse. I have difficulty walking because of my hip replacement and eye surgeries, and have actually fallen multiple times.

**(H)** Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested; and The property will be my family’s primary residence as soon as the City Tree is removed. Until that time I am prevented by the City Tree from occupying the house.

**(I)** Other information required by the city to make the findings required by subsection (d) of this section consistent with the Fair Housing Laws.

**DISABILITY RATING FROM THE VETERANS ADMINISTRATION**
November 27, 2018

Nicholas Peter Petredis
181 S 13th St
San Jose, CA 95112

In Reply Refer to:
xxx-xx-7493
27/eBenefits

Dear Mr. Petredis:

This letter certifies that Nicholas Peter Petredis is receiving service-connected disability compensation from the Department of Veterans Affairs.

The current benefit paid is as follows:

<table>
<thead>
<tr>
<th>Gross Benefit Amount</th>
<th>$1,182.52</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Amount Paid</td>
<td>$1,182.52</td>
</tr>
<tr>
<td>Effective Date</td>
<td>December 1, 2017</td>
</tr>
<tr>
<td>Combined Evaluation</td>
<td>60 percent</td>
</tr>
</tbody>
</table>

How You Can Contact Us

* If you need general information about benefits and eligibility, please visit us at https://www.ebenefits.va.gov or http://www.va.gov.
* Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-828-4833.

Sincerely,

Michael J. Frueh
Executive Director
Benefits Assistance Service
March 22, 2019

Nicholas and Theresa Petredis

RE: Request for Monterey pine tree removal at 1059 Jewell

The request for removal has been denied based on the following reasons:

After careful consideration and extensive review of the tree I have determined the following:

a) The tree is healthy with good foliage color and density.
b) The tree is a landmark tree for this neighborhood
c) Extensive beetle activity is not present that would indicate severe stress and/or decline of the tree.
d) No evidence of internal stress or decline is present such as bark fractures, cankers, conks or abnormal swelling
e) No evidence of soil movement indicated by fractures or shifting of the root plate is noted.
f) Damage to the retainer wall can be mitigated with construction of a wall with minimal root disturbance.
g) Removal of the driveway asphalt is required to assess the impacts of roots and determine if there are mitigation alternatives to removal of the tree.
12.70.010 Appeal of city arborist decision.

Any Person aggrieved by or objecting to any exercise of authority by the city arborist under this title shall have the right of appeal to the Beautification and Natural Resources Commission. Filing a timely and complete appeal with the city clerk shall suspend any permit or approval until the hearing on the appeal has been completed. A complete appeal shall include the: action being appealed; property address or location of the Tree impacted by the action; name and contact information of the Person or Persons filing the appeal; reasons for the appeal; and any fee for such appeal as adopted by the city council and included in the city’s master fee schedule, which is available at city hall and on the city’s website. (a) Appeals of the city arborist’s action hereunder shall proceed as follows: (1) Any applicant or interested person may, upon payment of a fee established by the council, appeal a permit decision to the Beautification and Natural Resources Commission within the 10- day posting period. The appeal will suspend a permit approval pending the commission’s hearing on the appeal. (2) Within 60 days of receipt of an appeal, the Beautification and Natural Resources Commission will hold a public hearing on the appeal unless the appeal is continued for good cause demonstrated. At least 10 calendar days prior to the hearing, the property on which the Tree or Trees subject to the appeal are located shall be posted with a notice of the date and time of the public hearing. Two identical notices shall be posted on public property within 200 feet of the property on which the subject Tree or Trees are located, in positions clearly visible to the public. The party appealing shall be notified by mail of the date and time of the hearing. (3) The Beautification and Natural Resources Commission may affirm, reverse, or modify the action of the city arborist, and in so acting, apply the standards set out in subsection (c) of this section. (4) The action of the Beautification and Natural Resources Commission may be appealed to the city council within 10 calendar days. 16 (5) Once the city council has considered an application for Removal or alteration of a Tree, all further applications relating to that Tree shall be made directly to the council.

Albert Weisfuss
City Arborist
CITY OF PACIFIC GROVE
NOTICE OF PUBLIC HEARING

TREE PERMIT APPLICATION NO: 19-0135
PROPERTY ADDRESS: 1059 Jewell
APPELLANT: Nicholas & Theresa Petredis
APPEAL: Appeal decision by the City Arborist denying request for removal of one Monterey pine (Pinus radiata) tree located in front of 1059 Jewell APN 006-122-006

WHERE AND WHEN: A public hearing by the BNRC is to be held on Tuesday April 16, 2019 at 4:00 P.M. at the City Council Chambers, 300 Forest Avenue, Pacific Grove, California.

Dated: April 4, 2019

Albert Weisfuss
City Arborist

If you have any questions about this item, please call the Public Works Department, Albert Weisfuss, at (831) 648-5722.

Please note that Section 65009 (b) (2) of the California Government Code provides that legal challenges to the City's action on this project may be limited to only those issues raised in testimony during the public hearing process.

The City of Pacific Grove does not discriminate against persons with disabilities. The Pacific Grove Civic Center is an accessible facility. A limited number of devices are available to assist those who are hearing impaired. If you would like to use one of these devices, please contact the Public Works Department Secretary at (831) 648-5722.

This notice may be removed after: April 16, 2019
TO: Beautification and Natural Resource Commission (BNRC)
FROM: Milas Smith, Environmental Programs Manager
MEETING DATE: April 16, 2019

SUBJECT: Single Use Plastics Ordinance Update

CEQA STATUS: This action does not constitute a “project” as defined by the California Environmental Quality Act (CEQA) guidelines section 15378

RECOMMENDATION
Recommend the City Council adopt amendments to Ordinance 11.98 and 11.99 for single use plastics and food packaging.

DISCUSSION
In December of 2018, the BNRC initiated the review of Ordinances 11.98 Single Use Plastics and 11.99 Food Packaging. A subcommittee was created to work with Staff on updating both chapters.

The BNRC received updates, heard public comments, and continued to modify the draft ordinance at the February, March, and April 2019, regularly scheduled monthly meetings.

The need to update the municipal code is directly correlated to three changes in market conditions. First, the collapse of the US recycling markets due to policy change in China. Second, need to reduce the amount of plastic pollution within the environment. Finally, CalRecycle and the State mandate to reduce food waste to landfill by 2022, SB1383.

ATTACHMENTS
1. Draft Ordinance Update Ch. 11.98 & 11.99
RESPECTFULLY SUBMITTED:

Milas Smith

Milas Smith
Environmental Programs Manager

REVIEWED BY:

Daniel Gho
Public Works Director
Chapter 11.98
REDUCTION OF SINGLE-USE PLASTICS AND PLASTICPAPER CARRYOUT BAGS

Sections:

11.98.010 Purpose and findings.
11.98.020 Definitions.
11.98.030 Ban on single use plastics bags and charge for single-use carryout bags.
11.98.035 Ban on single use personal care products in commercial and residential lodging.
11.98.040 Implementation.
11.98.050 Enforcement.

11.98.010 Purpose and findings.
(a) It is the intent of the city of Pacific Grove in amending enacting this chapter to eliminate the common use of plastic single-use plastics and carryout bags, to encourage the use of reusable bags by consumers, vendors, restaurants, non-profits, commercial and residential lodging providers and retailers, and to reduce the consumption of single-use plastics bags in general. It is the further purpose of this chapter that by promoting compostable materials and reusable products bags it will further the city’s overall waste reductions goals and further help the city to meet State mandated waste diversion targets, as may be amended from time to time by the state of California.

(b) Single use disposable packaging (SUDs) – including plastic bags, plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.

(c) Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world’s oceans.

(d) Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.

(eb) The City of Pacific Grove finds that the addition of this chapter to the municipal code qualifies as a regulation for the protection of natural resources and the environment as defined by the California Environmental Quality Act (CEQA). [Ord. 14-015 § 2, 2014].
For the purposes of this chapter, the following definitions apply:


“Compostable”: a material that meets ASTM standards and undergoes degradation by biological processes during composting to yield carbon dioxide (CO2), water, inorganic compounds, and biomass within a 4 month timeframe. Compostable disposable foodservice ware must be clearly labeled compostable in accordance with California Public Resources Code Section 42357 et seq. and all State and Federal labeling laws pertaining to the identification of compostable products.

“Exempted uses” means those point-of-purchase or delivery sales that have received a special exemption, through the community and economic development director or the director’s designee, allowing single-use bags.

“Commercial and residential lodging providers” means any hotel, motel, bed and breakfast, short term rental, or any other establishment which provides overnight lodging.

“Plastic” is a material derived from either petroleum or a biologically based polymer, such as corn or other plant sources.

“Plastic bag” or “plastic carryout bag” means a single-use carryout bag of any size that is provided at point of sale to customers by a retail establishment. Plastic bags include both compostable and non-compostable carryout bags.

“Polystyrene Foam” means and includes expanded polystyrene that is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blown molding (extruded foam polystyrene). This includes but is not limited to polystyrene foam plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.

“Recycled paper bag” is defined as a bag that contains no old growth fiber and is made up of a minimum of 40 percent post-consumer recycled content, is 100 percent post-consumer recyclable material, and has printed in a highly visible manner on the outside of the bag the words “100 percent compostable”, “Reusable” and “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.
“Reusable” means designed or intended for more than a single use or few uses, or intended for reuse, in contrast to disposable.

“Restaurant” is defined as an establishment doing business in the city of Pacific Grove whose principal business is the sale of prepared food for consumption either on or off premises, which includes a restaurant, cafe, bakery, food cart, take-out establishment, home kitchens, delicatessen, or catering truck.

“Retail establishment” or “retail store” means all sales outlets, stores, shops, vehicles, non-profits, resale businesses or other places of business located within the city of Pacific Grove that operate primarily to sell or convey goods directly to the ultimate consumer. Restaurants, as defined herein, are exempt from the requirements of this chapter. Also exempt from the requirements of this chapter is prepared food sold at grocery and convenience stores’ food counters.

“Reusable bag” means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either: (1) made of cloth or other washable woven fabric; or (2) made of durable material that is at least 4.0 mils thick that can be cleaned or disinfected at least 125 times. A reusable bag may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.

“Straw” means a tube through which beverages, slurries, smoothies, and similar ingestible products may be ingested by the consumer.

“Single-use carryout bag” is defined as a bag, other than a reusable bag, recycled bag, or compostable bag, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-use carryout bags do not include bags, a maximum size of 11 inches by 17 inches, without handles, provided to the customer to (1) transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) hold prescription medication dispensed from a pharmacy; or (3) segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag. [Ord. 14-015 § 2, 2014].

“Single use plastics” means single-use carryout plastic bags, cartons, boxes, or containers that are provided at the point of sale to customers. These typically include plates, cutlery, cups, lids, straws, “clamshells” and other containers which are a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.
“Single use plastics” means single-use amenities in plastic containers provided by hotels and other overnight lodging facilities. These typically include small containers of body wash, lotion, and hair products. They are major contributors to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.

11.98.030 Ban on single use plastics and plastic bags and charge for single-use carryout bags.

(a) No retail establishment shall provide single use plastics or plastic bags to customers at the point of sale, except as permitted in this chapter.

(b) No city of Pacific Grove contractors, special events promoters, or their vendors, while performing under contract or permit, within the city limits shall provide single use plastics or plastic carryout bags to customers at the point of sale.

(c) Single-use paper carryout bags provided to customers shall contain a minimum of 100/40 percent post-consumer recycled paper fiber and must be compostable as defined in this chapter recyclable in the city of Pacific Grove’s curbside recycling program.

(d) Retail establishments shall charge a minimum 10-cent fee for each single-use paper carryout bag provided to customers at the point of sale. Retail establishments shall keep annual records of paper bag distribution to be made available to the community and economic development director, city manager or designee upon request. From time to time, the city may review the annual records of paper bag distribution to ensure the effectiveness of these regulations.

(e) The charge imposed pursuant to this chapter shall not be charged to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

(f) Bags used to protect items such as meat or produce, wet items, or for any carry-out protection, should be made of compostable materials. This includes bags to protect bottles, bags around ice cream, bags used to weigh candy, pharmacy bags, or bags used to protect greeting cards. The ban on single-use plastic bags and the charge for single-use paper bags do not apply to plastic or paper bags used to protect produce or meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples or exemptions include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags, or paper bags used to protect greeting cards.
(g) Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

(h) Retail establishments shall indicate on the customer transaction receipt the number of paper carryout bags provided, and the total amount charged. [Ord. 14-015 § 2, 2014].

11.98.035 Ban on single use personal care products in commercial and residential lodging, Hospitality Industry

(a) Small plastic bottles of personal care products shall not be provided in hotel or motel rooms, vacation rentals, commercial or residential lodging or other accommodations within the city except to persons specifically requesting accommodations of a disability or other special need.

(b) Personal care products include shampoo, conditioner, lotion, and other similar products intended for personal use by visitors.

(c) Small plastic bottles refers to any plastic bottle containing less than 12 ounces.

11.98.040 Implementation. The city shall make available a copy of this chapter, or a link to this chapter on the city's website, to every new retail establishment that applies for a business license. [Ord. 14-015 § 2, 2014].

11.98.050 Enforcement. (a) Beginning March 1April 22, 2020, violations of this chapter may be enforced in accordance with Chapters 1.16 and 1.19 PGMC.

(b) The city's code compliance program shall be responsible for enforcing this chapter and shall have authority to issue citations for violations.

(c) Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

(d) The city attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter.

(e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

(f) The city may inspect any restaurant, cafe, bakery, food cart, special event vendor, booth, or concession, grocery store, delicatessen, home kitchen, take-out establishment, or, commercial and residential lodging, catering truck vendor's premises to verify compliance.
(g) Violation of this chapter will be considered a public nuisance. In addition to any other remedies or penalties that may be available, any violation described in the preceding paragraphs shall be subject to abatement by the city, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the superior court in a civil action, based upon a showing by the city that said violation exists. [Ord. 14-015 § 2, 2014].

Chapter 11.99
SINGLE USE FOODWARE, PACKAGING AND LITTER REDUCTION PACKAGING

Section:

11.90.005 Purposes and findings
11.99.010 Definitions.
11.99.020 Prohibited disposable food service ware.
11.99.030 Required biodegradable, compostable, or recyclable disposable food service ware.
11.99.035 Required dine-in reusable service ware, plates, cups, utensils.
11.99.040 Exemptions.
11.99.050 Enforcement.
11.99.060 Penalties.

11.98.005 Purpose and findings.
(a) It is the intent of the city of Pacific Grove in amending this chapter to eliminate the use of single-use plastics, to encourage the use of reusable products consumers, vendors, restaurants, non-profits, commercial and residential lodging providers and retailers, and to reduce the consumption of single-use plastics in general. It is the further purpose of this chapter that promoting compostable materials and reusable products will further the city’s overall waste reductions goals and further help the city to meet State mandated waste diversion targets.

(b) Single use disposable packaging (SUDs) and food ware – including plastic bags, plates, cutlery, cups, lids, straws, "clamshells" and other containers are a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.

(c) Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world’s oceans.

(d) Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
11.99.010 Definitions.

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

“Affordable” means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).


“ASTM standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

“Biodegradable” means the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

“City contractor” means any person or entity that has a contract with the city for work or improvement to be performed, for a franchise, concession, for grant moneys, goods and services, or supplies to be purchased at the expense of the city.

“City facility” means any building, structure, street, park, open space, city golf course, or vehicle owned and operated by the city, its agents, and departments.

“Compostable”: a material that meets ASTM standards and undergoes degradation by biological processes during composting to yield carbon dioxide (CO2), water, inorganic compounds, and biomass within a 4 month timeframe. Compostable disposable foodservice ware must be clearly labeled compostable in accordance with California Public Resources Code Section 42357 et seq. and all State and Federal labeling laws pertaining to the identification of compostable products. “Compostable” means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch), in a safe and timely manner. Compostable disposable food service ware must meet ASTM standards for compostability and any bioplastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.
“Disposable food service ware” means single-use plastic disposable products used by a vendor, food cart, merchant, food truck, or home kitchen, and food service industry for serving or transporting prepared ready-to-consume food or beverages. This includes but is not limited to plastic plates, straws, cups, lids, or utensils bowls, stirrers, beverage plugs, trays and hinged or lidded containers. This does not include single-use disposable items such as straws, cups lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

“Food provider” means any vendor located or providing food within the city which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck, food cart, special events vendor, or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.

“Person” means an individual, business, event promoter, special events vendor, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, and public or private public school.

“Polystyrene foam” means and includes expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blown molding (extruded foam polystyrene). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene.”

“PLA” (Polylactic acid or polylactide) is a biodegradable and bioactive thermoplastic aliphatic polyester derived from renewable biomass, typically from fermented plant starch such as from corn, cassava, sugarcane or sugar beet pulp.

“Prepared food” means food or beverage prepared for consumption on the food provider’s premises, or elsewhere using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

“Recyclable” means any material that is accepted by the city recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols Nos. 1 and 2.

“Retail food establishment” shall include, but not limited to, any place where food is prepared to include any fixed or mobile restaurant, food truck or food cart, drive-in, coffee shop, public food market, produce
stand, special event vendor, or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.

“SUDs” includes single use disposable food ware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers.

“Special events promoter” means an applicant or organization for any special events with or without a special events permit issued by the city or any city employee(s) responsible for any city-organized special event. [Ord. 08-010 § 4, 2008].

11.99.020 Prohibited disposable food service ware.

(a) No person may sell, offer for sale, or otherwise distribute within the city any food service ware that is not compostable and may not provide prepared food in any disposable food service ware that contains polystyrene foam. Food providers within the city may and may not provide prepared food in any disposable food service ware that contains polystyrene foam.

(b) Disposable food service ware that contains polystyrene foam is prohibited from use within the city, in all city facilities, or city owned properties.

(c) City contractors in the performance of city contracts and special events promoters within city limits may not provide or use prepared food in disposable food service ware that contains polystyrene foam or single use disposable plastics.

(d) It shall be a policy goal of the city that business establishments located outside the city shall not package any nonfood product in any package which utilizes polystyrene foam, both block polystyrene or packaging peanuts, or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The city shall promote and encourage, on a voluntary basis, the elimination of all single use disposable plastics, and polystyrene foam packaging. [Ord. 08-010 § 5, 2008].

11.99.030 Required biodegradable, compostable, or recyclable disposable food service ware.

(a) All food providers within the city utilizing disposable food service ware shall use biodegradable, compostable or recyclable products. This includes but is not limited to plates, napkins, straws, cups, lids, or utensils bowls, stirrers, beverage plugs, trays and hinged or lidded containers, unless there is no affordable alternative available as determined by the designated official (see term “affordable” defined in PGMC) and an exemption has been granted in accord with PGMC.
(b) Food providers may charge a “take-out fee” to cover the difference if any additional costs are incurred in providing compostable food ware.

(c) All city facilities utilizing disposable food service ware shall use products that are biodegradable, compostable, or recyclable.

(d) City contractors and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a city contract or permit.

[Ord. 08-010 § 6, 2008].

(e) "Straws shall be provided upon request. All plastic straws, including PLA/bioplastic are prohibited. Exceptions shall only be made to the consumer self-identifying as a person with a disability, whereupon a PLA/bioplastic straw may be provided to the consumer." Non-PLA straws that are compostable shall be provided only upon request.

11.99.035 Required dine-in reusable service ware, plates, cups, utensils.

(a) All food providers within the city must provide reusable service ware for dine-in customers.

(b) 11.99.040 Exemptions.

(a) No exemption shall allow for the use of recyclable, biodegradable, or polystyrene foam disposable food service ware.

(b) The city manager, or his or her designee, may exempt a food provider from the requirement set forth in PGMC 11.99.030, Required biodegradable, compostable, or recyclable disposable food service ware, for a period not to exceed 12 months per request upon the food provider showing, in writing, that this chapter creates an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The city manager shall confirm the decision to grant or deny each exemption in writing; the city manager’s decision shall be final.

(c) Each exemption request shall set forth all information necessary for the city manager to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The city manager may require additional information.

(d) The city manager may approve an exemption request in whole or in part, with or without conditions.

(e) Foods prepared or packaged outside the city and sold inside the city are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the city are encouraged to follow the
provisions of this chapter as it is a policy goal of this city to eliminate the use of single use plastics and polystyrene foam for packaging unprepared food.

(f) Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter. [Ord. 08-010 § 7, 2008].

11.99.050 Enforcement.

(a) Violations of this chapter may be enforced in accordance with Chapters 1.16 and 1.19 PGMC. The city manager, or his or her designee, shall be responsible for enforcing this chapter and shall have authority to issue citations for violations.

(b) The city officer is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.

(c) Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

(d) The city attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter.

(e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

(f) The city in accordance with applicable law may inspect any vendor or food provider's premises to verify compliance.

(g) Food vendors shall state that they are in compliance with this chapter on their annual business license renewal forms. [Ord. 08-010 § 8, 2008].

11.99.060 Penalties.

Violations of this chapter shall be enforced as follows:

(a) For the first violation, city manager shall issue a written warning to the food provider specifying that a violation of this chapter has occurred and which further notified the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have 30 days to comply.

(b) The following penalties shall apply for subsequent violations of this chapter:

(1) A citation imposing a fine in the sum of $2400.00 for the first violation that occurs more than 30 days after the warning issued pursuant to subsection (a) of this section. In lieu of payment of the fine, the person cited may submit receipts to the city manager that demonstrate the purchase,
following the service of the citation, of at least $2,400.00 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items, which led to the violation. Upon such proof the city manager may dismiss the citation.

(2) A fine in the sum of $4,200.00 for a violation that occurs after issuance of the citation referenced in subsection (b)(1) of this section, and that is more than 60 days after the warning issued pursuant to subsection (a) of this section.

(3) A fine in the sum of $9,500.00 for the third and each subsequent violation which occurs after issuance of the citation referenced in subsection (b)(1) of this section, and that is more than 90 days after the warning issued pursuant to subsection (a) of this section.

(c) Food providers who violate this chapter in connection with commercial or noncommercial special events, as that term is defined by PGMC 11.99.010, shall be issued a citation imposing fines as follows:

(1) A fine of $200.00 for each event of one to 50 persons;

(2) A fine of $840.00 for each event of more than 50 but less than 400 persons;

(3) A fine of $1,600.00 for each event of more than 400 but less than 600 persons;

(4) A fine of $1,400.00 for each event of more than 600 persons. [Ord. 09-005 § 19, 2009; Ord. 08-010 § 9, 2008].