ORDINANCE NO. 21-023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING CHAPTER 11.68 OF THE PACIFIC GROVE MUNICIPAL CODE TO ENABLE PROMISSORY NOTES ASSOCIATED WITH PAYMENT OF ENTITLEMENT WATER SALES

FACTS

1. The City of Pacific Grove is a Charter City.

2. The Pacific Grove Municipal Code (PGMC) sets forth Water Distribution rules in Title 11. Chapter 11.68 governs Water Entitlement processes by which discrete quantities of potable water made available by funding and operation of the Pacific Grove Local Water Project (PGLWP) are available for sale to end users. Entitlement water can enable new or intensified use of potable water delivered by the California American Water Distribution System and are evidenced by contractual rights granted by the city.

3. The PGLWP has produced recycled water since January 2018. The City previously issued a promissory note related to the sale of approximately 3.5725 acre feet of water entitlements to a large-scale construction project, at a sales price of $625,188. This enabled construction of a mixed-use development at 520 Lighthouse Avenue. The promissory note was secured by a deed of trust.

4. Future sale of water entitlements will be facilitated by secured payment promises for circumstances where actual water use is significantly delayed due to the scale of a project, extraordinary pre-construction factors or other circumstances affecting delayed project completion, occupancy, and water use. The opportunity to stage costs can promote completion of projects that rely on construction loan financing, particularly when permanent financing is available only upon completion and when project occupancy can occur.

5. An obligation to pay water entitlement costs can be secured by the City’s ability to withhold final occupancy permits.

6. The PG Local Water Project EIR was certified on 11/19/2014 (SCH#2014921058). Adoption of an Ordinance to Amend PGMC Chapter 11.68 does not constitute a “Project” Under California Environmental Quality Act (CEQA) Guidelines Section 15378 as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. Facts.
The facts set forth above are true and correct and are adopted as findings of the City Council as though set forth fully within the body of this ordinance.

SECTION 2. Amendment of Pacific Grove Municipal Code Section 11.68.040

Section 11.68.040 of Chapter 11.68 (Water Distribution Regulations) shall be amended to address City issuance of promissory notes to secure payment for Entitlement Water Sales by the addition of text shown in bold italics below:

11.68.040 Entitlement water.

(a) Sale of PGLWP entitlement water shall be set at the rate determined by council resolution. Fees paid to the city by the applicant to remain on a water wait list shall be applied as a credit toward the purchase of the water entitlement; no refund shall be granted.

(b) If warranted by circumstances related to the sale of 2.0 acre feet of water or more for a specific project, the City in its sole discretion may elect to enter into a promissory agreement with the property owner(s) to effect sale of entitlement water. The maximum amount payable pursuant to the promissory agreement shall not exceed ninety percent (90%) of the water entitlement purchase price; the purchaser shall pay to the City as a deposit the remaining purchase cost as a condition precedent to execution of the promissory agreement.

a. Any water entitlement that is subject to a promissory agreement shall be subject to revocation, shall not vest and shall not run with the land until the promissory obligation has been paid in full to the City.

b. If consideration required pursuant to a promissory agreement is not paid to the City in full when due, including but not limited to principal, interest, costs and fees, the owner(s) shall be in default of the promissory agreement. Unconditional transfer of an entitlement shall occur only following receipt of full payment by the City.

c. If full and complete payment is not timely received by the City, the City shall retain authority to revoke the water entitlement, in part or in full.

d. Transfer or assignment of any promissory agreement or any interest in a water entitlement subject to a promissory agreement shall not be made without the advance written consent of the City.

e. The City shall also withhold all final occupancy permits for any project for which a promissory agreement is in default, until such time as the default has been cured by full payment of all amounts owed.

(c) City Council approval shall be required for the City to enter into any promissory note
related to payment for entitlement water.

(d) After purchase of entitlement water, the city may rebate the pro rata purchase price to the then-current property owner (less a reasonable processing fee) upon city revocation of any increment of unused water entitlement, but payment of the rebate amount shall not be made by the city until sale of that water increment has been completed and paid in full to the city by another water user.

SECTION 3. Interpretation.

This Ordinance shall be liberally construed to implement its purposes.

SECTION 4. Severability.

If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. Effective Date.

In accordance with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

SECTION 6. No Sunset Date.

This ordinance shall have continuing effect and shall not expire.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 1st day of September, 2021, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Coletti, McAdams, Poduri, and Tomlinson.
NOES: Councilmember Amelio
ABSENT: None.

APPROVED:

BILL PEAKE, Mayor
ATTEST:  9/7/2021
DATED: __________________________

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SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

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DAVID C. LAREDO, City Attorney