



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Members of the Planning Commission
FROM: Mark Brodeur, Director, Community & Economic Development
MEETING DATE: August 20, 2015
SUBJECT: Consideration of Adoption of a Condominium Ordinance for the Holman Building
CEQA: Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Recommend adoption of a new Condominium Ordinance for the Holman Building as required in Table 23.31.030, End Note # 6 regarding condominiums permitted in the C-1-T District.

DISCUSSION

The adaptive reuse proposal for the Holman Building includes 25 residential condominium units. The Holman Building is located in the C-1-T zoning district. The C-1-T zoning district was created through a voter initiative and includes some unique provisions not found in other zoning districts in Pacific Grove. One of those provisions is the allowance of up to 25 residential condominiums in the C-1-T zoning district (which is confined to the block commonly referred to as the Holman Block). An Architectural and Use Permit application was submitted to the City on June 3, 2015 that proposes 25 residential condominiums that are a mix of 2 and 3 bedroom plus study, and commercial uses. Before the Permit application can be acted upon, however, Council must adopt a Condominium Ordinance specific to the Holman property and the C-1-T zoning district.

End Note #6 in Table 23.31.030 reads in part;

"The council shall, by ordinance, establish standards, conditions and other regulations to develop to govern the development of condominiums in the C-1-T district."

In all other zoning districts in the City of Pacific Grove, the provisions of Chapter 23.45 apply to condominium development. It is apparent that the makers of the C-1-T district felt the provisions of 23.45 were too restrictive in nature for the unique nature of the Holman site.

It should be noted that the draft Condominium Ordinance before you was drafted by a collaborative City staff effort composed of both the City Attorney and the Community and Economic Development Director to make ensure the Ordinance is complete. The Ordinance is supported by the developer of the Holman Building.

The contents of the draft Ordinance include the following provisions:

Sections:

- 23.32.010 Purpose and Intent.
- 23.32.020 Definitions.
- 23.32.030 Generally.
- 23.32.040 Permitting Procedures.
- 23.32.050 Application requirements.
- 23.32.060 Standards.
- 23.32.070 Owners Association and Organizational documents.
- 23.32.080 Hearing.
- 23.32.090 Findings.

Parking

The ordinance proposes one on-site parking space for each of the condominium uses for a total of 25 parking spaces. The proposal includes six two-bedroom plus study units, four three-bedroom units and 15 three-bedroom plus study units.

Parking for commercial uses is exempt because of the buildings location in the downtown commercial area. Fourteen additional parking spaces for building visitors are on the adjacent parcel to the north of the building.

CEQA

The recommended action does not constitute a "Project" as that term is defined under the California Environmental Quality Act (CEQA) Guideline Section 15378, as it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

OPTIONS

1. Do nothing.
2. Recommend approval of the Draft Condominium Ordinance.
3. Recommend approval of the Draft Condominium Ordinance with modifications.

FISCAL IMPACT

No direct impact.

ATTACHMENTS

1. Draft Condominium Ordinance

RESPECTFULLY SUBMITTED,



Mark Brodeur
Community and Economic Development Director

ORDINANCE NO. 15-**AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING
THE PACIFIC GROVE MUNICIPAL CODE TO REGULATE
CONDOMINIUMS WITHIN THE C-1-T ZONE.****FINDINGS**

WHEREAS, the Pacific Grove Municipal Code (PGMC) for the City of Pacific Grove (“City”) controls land use through Section 23-Zoning and;

WHEREAS, the proposed amendment conforms with the City General Plan in that it balances the needs to provide adequate parking in residential and commercial developments, and;

WHEREAS, the Zoning Code allows condominium use in the provisions of Chapter 23.45 and;

WHEREAS, the Zoning Code provisions of the C-1-T district are unique from the rest of the Zoning Code;

WHEREAS, the provisions of Chapter 23.45 shall not apply to the development of condominiums in the C-1-T district and;

WHEREAS, the Council shall by ordinance, establish standards, conditions and other regulations to govern the development of condominiums in the C-1-T District and;

WHEREAS, until and unless such standards, conditions and other regulations are in place, no application for such development shall be accepted or processed, and;

WHEREAS, such standards, conditions and regulations established by Council shall be in addition to and harmonious with State Law governing condominium development, and;

WHEREAS, in the course of the review of the draft Ordinance, amendments proposed by these ordinances does not result in any new or significant impacts to the environment because they are either more protective or procedural in nature; and

WHEREAS, Enactment of this ordinance action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment (Section 15061(b) (3)).

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
PACIFIC GROVE:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City of Pacific Grove adopts the text set forth entitled “C-1-T ZONE CONDOMINIUM ORDINANCE.” This chapter shall be added as Chapter 23.32 in Title 23 and shall read as follows:

C-1-T ZONE CONDOMINIUM ORDINANCE

Sections:

23.32.010 Purpose and Intent.

23.32.020 Definitions.

23.32.030 Generally.

23.32.040 Permitting Procedures.

23.32.050 Application requirements.

23.32.060 Standards.

23.32.070 Owners Association and Organizational documents.

23.32.080 Hearing.

23.32.090 Findings.

23.32.010 Purpose and Intent.

The city recognizes the importance of a suitable living environment for all residents and that residential condominium units are a valuable form of housing. The city also recognizes the importance of suitable commercial locations to foster economic development and that commercial condominium units provide a means to facilitate commercial activity.

It is the intent of the city to create controls for residential and commercial condominium development within the C-1-T zone as it is recognized that the condominium form of property Ownership creates unique problems relating to the land use, aesthetic, social and economic environment of the city. Therefore, it is the purpose of this chapter to accomplish the following:

- (a) Assure adequate maintenance of condominiums, as their fragmented Ownership may result in conditions of disrepair that are inimical to the public health, safety, and welfare.
- (b) Assure each Condominium Project is capable of satisfying the more demanding physical needs of long-term Owners in contract to the lesser expectations of short-term rental occupants.
- (c) Provide for maintenance of rental units within Projects that are converted, especially for the disabled and elderly.
- (d) This Chapter shall apply exclusively to properties within the C-1-T zone, and shall have no force or effect in any other location in the City of Pacific Grove.

23.32.020 Definitions.

For purposes of this chapter, words contained in this section shall be defined as follows:

- (a) “Association” means the organization of persons who own a lot, parcel, area, condominium, or right of exclusive occupancy of a specific unit.
- (b) “Condominium” means real property, portions of which are designated for separate or individual Ownership, the remainder of which is designated for common Ownership solely by the Owners of those separate portions.
- (c) “Condominium Project” means the entire parcel of real property, including all structures thereon, to be divided into two or more units for the purpose of constructing or converting existing structures or condominium units.
- (d) “Community Apartment” means a development in which there is an undivided interest in the land coupled with the right of exclusive occupancy of an apartment situated therein. Community apartments shall be subject to the same restrictions and conditions set forth in this chapter for Condominiums.
- (e) “CC&Rs” refers to a condominium's covenants, conditions and restrictions.
- (f) “Davis-Stirling Common Interest Development Act” or “Davis-Stirling Act” means the California Civil Code, beginning at section 4000, which governs condominium, cooperative, and planned unit development communities.
- (g) “Developer” means the owner or subdivider with a controlling proprietary interest in the community housing project, or the person or organization making application under this chapter.
- (h) “Organizational Documents” means the declaration of restrictions, articles of incorporation, bylaws, and any contracts for the maintenance, management, or operation of all or any part of a Project.
- (i) “Owners Association” shall have the same meaning as the term Association.
- (j) “Project” shall have the same meaning as the term Condominium Project.
- (k) “Reserves for Common Expenses” means moneys held by the Association that may be expended for ground and building maintenance, maintenance and operation of recreational and other facilities, elevator maintenance, sidewalks and street maintenance, reserve costs, improvements unexpected repair work, replacement and upkeep of common areas and facilities, or taxes and special assessments
- (l) “Tenant” means a person who rents, leases, or subleases, through either a written or oral agreement, real property from another.

(m) “Unit” is any one commercial or residential unit in a Condominium Project. A Unit is the element of a Condominium Project that is not owned in common with the other Owners of the Project, or is an apartment in a Community Apartment project or stock cooperative to which an owner of an undivided interest in common in a Community Apartment project has a right of exclusive occupancy.

23.32.030 Generally.

(a) This chapter shall apply in the C-1-T zoning district, and shall be subject to the provisions of Chapter 23.64 PGMC unless provisions of this chapter conflict with Chapter 23.64 PGMC, in which event the provisions of this chapter shall prevail.

(b) The Davis-Stirling Common Interest Development Act is hereby adopted by reference and incorporated in this chapter as if fully set forth herein, as authorized by Government Code Section 50020 et seq. The city may enforce the Davis-Sterling Act in accord with the enforcement procedures and remedies set forth in Chapter 1.19 PGMC, in addition to any other provision of law.

(c) Condominiums shall be subject to the provisions of the Davis-Stirling Act unless the provisions of this Chapter conflict with the Davis-Stirling Act, in which event the provisions of this chapter shall prevail.

23.32.040 Permitting Procedures.

(a) Certificate of use and occupancy requirements. No person, firm, corporation, partnership or other entity shall own or operate a Condominium subdivision, Community Apartment, owners Association, stock cooperative, or any other form of Ownership without first obtaining approval by the planning commission and having been issued a certificate of use and occupancy by the Community and Economic Development Director.

(b) Issuance and Expiration. The Community and Economic Development Director shall issue a certificate of use and occupancy for Condominium use when he or she determines that:

- (1) The applicant has complied with all the applicable city and state regulations then in effect;
- (2) The applicant has complied with all conditions of approval. A permit shall expire at the time a tentative subdivision map approval would expire if not acted upon, or if the conditions of approval have not been complied within such time.

(c) Conditions prerequisite to issuance. No certificate of use and occupancy for Condominium use shall be issued for a building until it meets the following standards:

- (1) The proposed density and design characteristics of the buildings and grounds are in conformance with the city’s general plan and comply with the zoning ordinance, codified in this title.
- (2) All violations of the current codes described in PGMC 18.04.010 have been corrected and any equipment or facilities which the chief building inspector determines are deteriorated or hazardous are replaced.

- (3) It shall comply with all provisions of the Subdivision Map Act and PGMC Title 24, if applicable, including PGMC 24.72.030 (a) and (b) and PGMC 24.72.060 (e).

23.32.050 Application Requirements.

No application for a Condominium Project in a C-1-T zone shall be accepted for any purpose unless the application includes the following:

(a) A development plan of the Project including:

- (1) The location, heights, gross floor area, and proposed uses for each floor within each structure;
- (2) The description of each Unit in sufficient legal description and all rights, obligations and interests bound to each Unit;
- (3) The designation as to which areas and Units are dedicated to separate Condominium Ownership, and which areas are dedicated to common Ownership and use;
- (4) The designation as to whether each Unit is limited to residential or commercial use;
- (5) The location for public meeting rooms for use by the Owners Associations and the City of Pacific Grove;
- (6) The location, use and type of surfacing for all storage areas;
- (7) The location of any and all common elements and equipment, including but not limited to HVAC, elevators, gates and doors, and public features;
- (8) The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, curb cuts, and points of access;
- (9) The location and size of all parking facilities to be used in conjunction with each Condominium Unit;
- (10) The location, height, and type of materials for any walls or fences;
- (11) The location of all landscaped areas, the type of landscaping, and a statement specifying the method by which the landscaped areas shall be maintained;
- (12) The location and description of all common facilities and a statement specifying the method of the maintenance thereof;
- (13) The location and description of all common ingress and egress into the building;
- (14) The location, type and size of all drainage pipes and structures depicted or described to the nearest public drain or watercourse;
- (15) The maximum height of the finished rooftop;
- (16) The location, type and size of all on-site and adjacent street overhead utility lines;
- (17) Balconies designed to serve a single unit, but located outside the unit's boundaries;
- (18) Existing and proposed exterior elevations;
- (19) All rooftop wireless facilities, and any screening related to those features;
- (20) The location of and provisions for any unique site features.

(b) A "Reserve Study" describing the Project's compliance with the most recently adopted Uniform Building Codes (fire, building, electrical and plumbing). The report shall contain estimates of the remaining useful life of the following elements: structure; walls; roofs; paved surfaces; heating and air conditioning systems; hot water heaters; and, where they are reasonably accessible for inspection, other electrical, plumbing and mechanical equipment.

- (c) A statement of unique provisions of the proposed CC&Rs that would be applied on behalf of any and all Owners of Condominium units within the Project. With regards to stock cooperatives, this submission shall consist of a summary of proposed management, occupancy and maintenance policies on forms approved by the city attorney;
- (d) A report by a qualified acoustical consultant, based on field tests, which assesses the compliance of the existing units with the sound transmission requirements of Chapter 35 of the Uniform Building Code for walls, floors and ceilings that separate the proposed dwelling units. The field studies will have been based on a randomly selected number of units that are representative of the types and arrangement of units in the Project. At least ten percent of the units shall be tested, but no fewer than two units of each type (e.g., internal vs. external), whichever is the greater number. The report shall contain details of measures that may be necessary to bring the units up to code requirements.
- (e) Sales information, including, but not limited to, the following information:
- (1) Anticipated range of sales prices, monthly mortgage payments, owner's fees, and taxes for individual unit types based on information available at the time; and
 - (2) A statement as to whether residential units will be available for sale to households with minor children.
- (f) Floor plans of each unit, with a table indicating the number of bedrooms for residential units and floor areas of each type unit and the number of each unit.
- (g) A written description of the proposed Project's organization, including the use and control of the common areas and all facilities.
- (h) A title insurance report in the form employed by lending institutions;
- (i) A certified surveyor's report indicating the boundaries and all improvements;
- (j) Additional information as required by the Community and Economic Development Director or Planning Commission.
- (k) A processing fee as established by resolution of the council or as set in the Master Fee Schedule, in addition to any fees required by PGMC Title 24, Subdivisions, and subsection (f) of this section.
- (l) The Community and Economic Development Director may waive any of the above required information that is deemed unnecessary.

23.32.060 Standards.

Condominium standards in this chapter are the minimum necessary to insure that all purposes and objectives are accomplished. Condominiums shall comply with these standards and the standards set forth by the Davis-Stirling Act. The standards for the physical development of Condominiums are as follows:

(a) Unit Construction. The total number of residential Condominiums allowable in the C-1-T Zone shall not exceed 25 units.

(b) Unit size. The enclosed living or habitable area of each residential Condominium Unit shall be not less than 1,000 square feet exclusive of storage under subsection (f) of this section.

(c) Fire Prevention. Fire Prevention. The living or habitable area of each residential and commercial Condominium Unit shall comply with all provisions of the California Fire Code as adopted by Chapter 18.32 PGMC.

(d) Sound Transmission. Wall and floor-ceiling assemblies shall conform to Title 25, California Administrative Code, Section 1092, or its successor, or permanent mechanical equipment, including domestic appliances, which is determined by the chief building inspector to be a potential source of vibration or noise, shall be shock mounted, isolated from the floor and ceiling, or otherwise installed in a manner approved by the chief building inspector to lessen the transmission of vibration and noise. Floor covering may only be replaced by another floor covering that provides the same or greater insulation.

(e) Utilities and Utility Metering.

(1) The consumption of gas and electricity within each Condominium Unit shall be separately metered so that the unit can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture. Each unit shall have access to each meter and heater for the unit without entry through another unit.

(2) Each Condominium Unit shall have its own panel, and access thereto, for all electrical circuits which serve the unit.

(3) Each Condominium Unit shall have conduits or other passages for optical fiber or copper connection to CATV, phone, and internet lines.

(4) Each Condominium Unit shall be plumbed for purple pipe.

(f) Private Residential Storage Space. Each residential Condominium Unit shall have at least 200 cubic feet of enclosed weather-proofed and lockable private storage space, in addition to guest, linen, pantry, and clothes closets customarily provided. Such space shall be for the sole use of the residential Condominium unit owner. Such space may be provided in any location, but shall not be divided into two or more locations. In such cases where the applicant can demonstrate that standard is unreasonable, this standard may be modified by the planning commission.

(g) Laundry Facilities. A laundry area shall be provided within each residential Condominium Unit.

(h) Condition of Equipment and Appliances. The applicant shall provide written certification to the buyer of each residential Condominium Unit on the initial sale that any dishwashers, garbage disposals, stoves, refrigerators, hot water tanks, and air conditioners that are provided are in good and working condition as of the close of escrow. At such time as the Owners Association takes over management of the development, the applicant shall provide written certification to the Association that any appliances and mechanical equipment to be owned in common by the Association is in good and working condition.

(i) Public Easements. The applicant shall make provisions for dedication of the land or easements for public access or other public purpose in connection with the Project where reasonably necessary as determined by the planning commission.

(j) Refurbishing and Restoration. All main buildings, structures, fences, patio enclosures, garages, accessory buildings, sidewalks, driveways, landscaped areas, irrigation systems, and additional elements as required by the Community and Economic Development Director shall be maintained as necessary to achieve high quality appearance and safety.

(k) Parking Standards. Off-street parking requirements for each Condominium Unit shall be one covered parking space per unit plus fourteen spaces provided immediately adjacent for visitors to the Holman Building. Discrete or dedicated parking spaces shall not be delineated for commercial Condominium Owners or customers.

(l) CC&Rs. The Community and Economic Development Director shall approve all CC&Rs for residential or commercial Condominium Unit before any Condominium Unit shall be sold.

23.32.070 Owners Association and Organizational documents.

The developer and/or owner shall form and incorporate an Owners Association that complies with the Davis-Stirling Act and is approved by the Community and Economic Development Director prior to assumption of Project management by the Owners Association

(a) Owners Association. The Owners Association shall be established for all residential and commercial Condominium Units by recordation of the following:

- (1) Articles of Incorporation of the Association;
- (2) Declarations of CC&Rs;
- (3) Bylaws of the Owners Association.

(b) Adequate Reserves. Owners Association Bylaws shall require a sinking fund in accordance with the Davis-Stirling Act for an amount satisfactory to the Community and Economic Development Director, upon advice of the City Engineer, for the maintenance and repair of all commonly owned structures, mechanical equipment, open space, common guest parking and landscaped areas.

(c) Limit on Use of Reserves. Except as limited by the Davis Sterling Act, reserves shall not be used to pay any of these expenses: Operating costs, recurring utility expenses, heating or cooling, janitorial services, trash and garbage disposal, ground and building maintenance, security, insurance, other operating costs, management costs, accounting and bookkeeping services, legal services, management fees.

(d) City Approval of CC&Rs. Condominium CC&Rs shall be submitted to the city for approval at the time of the use permit application. The CC&Rs shall first be approved as to form and content by the City Attorney and then by the Planning Commission at the time the Commission acts on the use permit. The city shall also review and approve any amendment to the CC&R's. The Condominium CC&Rs shall contain but not be limited to the following provisions:

- (1) Except where maintained by a public utility, all on-site property improvements, including common areas, vehicular access ways, sewers, storm drains, street lighting, fire prevention water systems, and/or landscaping shall be maintained as a common expense by the Association. The city will be responsible for maintenance of only those facilities, situated within a public right-of-way, that have been accepted by the city.
- (2) Prior to Project approval, the developer shall create and fund an account in the name of the Owners Association. The account shall be limited in use to repair and/or replace common areas or common equipment. The initial reserve shall be set at hundred dollars for each Condominium Unit.
- (3) For the period beginning with the sale of the first Condominium unit and continuing for a period of one year after the sale of fifty percent of the Condominium units the Developer shall fulfill all responsibilities of the Association for maintenance of all common facilities that require maintenance during this period. The expiration of this period shall not limit or relieve the Developer from satisfactory performance of any agreements executed with the city or with others.
- (4) In the event maintenance responsibilities of the Association are not fulfilled, the city shall have the power but not the obligation to compel such maintenance. Any costs incurred by the city shall be billed to and paid by the Association. The city may also seek recovery by any means allowed by the PGMC, including but not limited to placing a lien on the property.
- (5) The Condominium Project shall be managed by a professional manager or management firm for at least the first sixty (60) months following the date of the sale of the first unit.
- (6) No individual owner may avoid liability for his or her prorated share of the expenses for common area by renouncing his or her rights in the common area.
- (7) Provisions to govern exclusive use of a designated parking space for each residential Condominium Unit.
- (8) All current books, accounts and records of the Association must be made available to Condominium Owners for inspection within ten days of any written request. All books, accounts and records of the Association for the prior 10 fiscal years must be made available to Condominium Owners for inspection within thirty days of any written request.

- (9) Additional conditions as required by the Community and Economic Development Director.
- (10) Amendment or modification to the CC&Rs shall require the advance approval of the city.

23.32.080 Hearing.

Concurrent with Tentative Map approval, the planning commission shall hold a public hearing on the application. In addition to publication and posting of legal notice, notice of the hearing shall be mailed at least 10 days prior to hearing date to occupants and Owners of the site, and shall be posted on the property.

23.32.090 Use Permit – Required Findings.

The planning commission shall not approve an application to create a Condominium unless the planning commission finds that:

- (a) All provisions of this chapter are met and the Project will not be detrimental to the health, safety, and general welfare of the community.
- (b) The proposed Condominium is consistent with the general plan of the City of Pacific Grove.
- (c) The proposed Condominium will conform to the Pacific Grove Municipal Code in effect at the time of approval, except as otherwise provided in this chapter.
- (d) The overall design and physical condition of the Condominium will result in a Project which is aesthetically attractive, safe and of quality construction
- (e) The requirements of PGMC 23.29.110 have been met.

SECTION 3. In accord with Article 15 of the City Charter, this ordinance shall take effect thirty days following passage and adoption hereof.

SECTION 4. The City Manager and City Clerk are directed to perform all tasks necessary to implement this ordinance. This measure may, but shall not be required to, cause republication of the Pacific Grove Municipal Code.

SECTION 5. 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.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF
PACIFIC GROVE this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney