



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

Mayor Dave Potter, Council Members Jeff Baron,
Karen Ferlito, Bobby Richards, and Carrie Theis
Contact: 831.620.2000 www.ci.carmel.ca.us

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

CITY COUNCIL SPECIAL MEETING Tuesday, December 15, 2020 4:30 PM

Governor Newsom's Executive Order N-29-20 has allowed local legislative bodies to hold public meetings via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Also, see the Order by the Monterey County Public Health Officer issued March 17, 2020. The health and well-being of our residents is the top priority for the City of Carmel-by-the-Sea. To that end, this meeting will be held via teleconference and web-streamed on the City's website ONLY.

To attend via Teleconference; Dial in number 1 208-606-0538 PIN: 951 267 957#

The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be added to the agenda and made part of the record.

THE DECEMBER 8, 2020 CITY COUNCIL MEETING WAS ADJOURNED TO THIS SPECIAL MEETING

CALL TO ORDER AND ROLL CALL

PUBLIC APPEARANCES

Members of the Public are invited to speak on any item that does not appear on the Agenda and that is within the subject matter jurisdiction of the City Council. The exception is a Closed Session agenda, where speakers may address the Council on those items before the Closed Session begins. Speakers are usually given three (3) minutes to speak on any item; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak. If an individual wishes to submit written information, he or she may give it to the City Clerk. Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

ANNOUNCEMENTS

- A. City Attorney Announcements

ORDERS OF BUSINESS

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

1. Update on Outdoor Seating in the Public Way
2. Urgency Ordinance 2020-008 and Ordinance 2020-009 amending and restating Chapter 12.46 (Sidewalk Vending Program) of the Carmel-by-the-Sea Municipal Code.

PUBLIC HEARINGS

3. Resolution 2020-087 declaring results of majority protest proceedings and renewing the Carmel Hospitality Improvement District for a term of March 1, 2021 through February 28, 2031 and Resolution 2020-088 authorizing the City Administrator to execute a Professional Services Agreement with Visit Carmel to serve as the Carmel Hospitality Improvement District Owners' Association for a term of March 1, 2021 through February 28, 2031

FUTURE AGENDA ITEMS

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, outside the Park Branch Library, NE corner of Mission Street and 6th Avenue, the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us> in accordance with applicable legal requirements.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

SPECIAL NOTICES TO PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



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

December 15, 2020
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie Waffle, AiCP – Acting Community Development Planning & Building Director
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Update on Outdoor Seating in the Public Way

RECOMMENDATION:

Receive report and provide direction.

BACKGROUND/SUMMARY:

The Outdoor Seating in the Public Way program allows full-line restaurants, specialty restaurants (i.e. coffee shops), wine tasting rooms and bars (operating as restaurants) to establish outdoor seating areas in the public way. Full-line restaurants, some wine tasting shops and bars operating as restaurants, are allowed up to two public parking spaces and 16 seats and specialty restaurants are allowed one parking space and 8 seats. Sidewalk seating may also be permitted depending on the availability of space which varies from location to location.

Outdoor seating areas located in public parking spaces are required to have a barrier that is between 3' and 4' tall surrounding the seating area and must be of a substantial weight (50-100 pounds). The barrier defines the boundaries of the outdoor seating area and provides a visual and physical separation between patrons and vehicles. Outdoor seating areas may also include umbrellas and/or heaters. Umbrellas are required to be removed from the public way at the close of business daily and stored on private property. Heaters may remain within outdoor seating areas but propane tanks are required to be removed and safely stored on private property. Each outdoor seating area is required to provide a private trash receptacle to minimize impacts on City-supplied trash receptacles.

Restaurants that have private patios approved as part of their Use Permits may continue to use these areas. Expansion of outdoor seating beyond what is allowed under the Use Permit requires a no-fee Design Review permit. At no time can an outdoor seating area on private property obstruct the path of travel for persons with disabilities or obstruct required egress from buildings. Property owner approval is required for all outdoor seating areas on private property.

The mayor's ad-hoc committee on outdoor dining meets approximately every two weeks to discuss the current state of the program as well as the future need for, and implications of, outdoor dining. Should the Council decide to extend the program, the committee would continue to meet on a regular basis and solicit

feedback from a variety of stakeholders including retailers, residents, restaurants and wine tasting rooms.

Should the Outdoor Dining program be extended? If so, for how long?

The City’s outdoor seating program has been in place since May 2020 and has been modified as conditions in the community have changed. From its inception, staff anticipated the program remaining in effect until indoor dining operations returned to normal capacity or December 31, 2020, whichever occurred first. With the end of the year rapidly approaching and the prohibition on indoor dining remaining in effect for the foreseeable future, staff is seeking direction from the Council on whether the program should be extended and if so, for how long. The restaurant and wine tasting communities have expressed some reservations about investing more money in their outdoor seating areas until they know whether the program will be extended and for how long. At the last ah-hoc committee meeting there was general consensus that an extension to April 30, 2021 would give staff time to explore a long term solution to outdoor dining.

If the program is extended, should the City collect application and/or parking reservation fees to offset the on-going costs to manage the program?

The application fee for a typical, temporary encroachment permit is \$210. Temporary encroachments generally include, trenching, driveway replacements, and utility work (i.e. PG&E).

Parking space reservation fees associated with special events include a \$735 permit fee and a \$100 per stall per day fee. During peak demand periods, the parking stall fee is \$200 per stall per day.

Construction parking permits are \$35 for the permit and \$35 per stall per day.

Below is a table that shows the potential costs for continued use of public parking spaces over a one to three-month period.

Table 1. Application Fees for use of Public Parking Spaces

Special Event	30 days	60 days	90 days	Construction Parking	30 days	60 days	90 days
\$735 permit fee	\$735	\$735	\$735	\$35 permit fee	\$35	\$35	\$35
\$100/day for 1 space	\$3,000	\$6,000	\$9,000	\$35/day for 1 space	\$1,050	\$2,100	\$3,150
\$200/day for 2 spaces	\$6,000	\$12,000	\$18,000	\$70/day for 2 spaces	\$2,100	\$4,200	\$6,300
Total Cost	\$3,735- \$6,735	\$6,735- \$12,735	\$9,735- \$18,735	Total Cost	\$1,085- \$2,135	\$2,135- \$4,235	\$3,185- \$6,635

What types of outdoor seating covers are acceptable in the public way? Should we explore the use of electric heaters in-lieu of propane?

Since the end of daylight savings time, the weather has become significantly colder and the potential for rain creates challenges for outdoor dining. There has been some interest in replacing umbrellas with waterproof awnings or pop-up tents. However, the restriction on one solid wall has left many businesses skeptical whether adequate protection from the weather can be achieved. There are additional challenges with using heaters in close proximity to combustible materials such as umbrellas, awnings, trees and buildings.

Should we allow more than 16 seats within outdoor dining areas with the use of plexi-glass barriers? If so, how many seats should be allowed?

Other potential changes to the program include an increase in seats within the outdoor dining areas in the street. The program currently sets a limit of 16 seats if social distancing can be maintained. This has been

challenging and more restaurants are investing in freestanding plexi-glass barriers between tables. With the addition of this safety feature, restaurants are also asking for additional seats. One of the challenges with plexi-glass barriers is that they create “walls” and could be viewed as violating County guidance for covered outdoor seating areas especially in combination with pop-up tents/canopies which have a lower height. Enclosing the outdoor dining areas to protect patrons from wind and rain will restrict air flow and could contribute to the spread of the Coronavirus.

Should there be a standard closing time for outdoor dining in the public way? If so, what time should that be?

Hours of operation has also been a topic of discussion. Restaurants and wine tasting rooms are currently operating in accordance with their Use Permit hours of operation for indoor dining. This varies from permit to permit.

What approach to enforcement is most appropriate? Revocation of permits or citations?

Enforcement of the outdoor seating program requires constant monitoring and redirects code compliance resources away from other enforcement activities such as responding to complaints and proactive enforcement in the residential areas. Common violations include, exceeding seating capacity; placing heaters too close to umbrellas and trees and in the sidewalk where it obstructs pedestrian flow; and, not maintaining 6 feet of social distancing between patrons.

What does the future of the outdoor seating program look like? Should staff engage the Planning Commission in discussions about outdoor dining as a permanent fixture in the village?

The outdoor seating program was established in response to the shutdown of restaurants due to the rapid spread of the Coronavirus. The terms and conditions of the program continue to change to improve the safety and comfort of outdoor dining. What originally began as a temporary accommodation in the public way has become a longer term solution due to the extended period of restaurant closures for indoor dining. Many businesses have made substantial investments to-date to improve the safety and functionality of their outdoor dining spaces. If the outdoor seating is to continue for the foreseeable future a more comprehensive discussion between stakeholders and the Planning Commission should be considered. The Council should also take into consideration redirecting limited staff resources for the continued management of the program and the effect it will have on delivery of other services in the Community Planning & Building Department.

FISCAL IMPACT:

Encroachment Permits and Design Review permits are being issued as “no-fee” permits. Costs associated with staff time to manage and enforce the program are covered by the General Fund.

PRIOR CITY COUNCIL ACTION:

At the June 2, 2020 meeting the City Council adopted Resolution 20-038 updating the City’s insurance requirements. Insurance is required for most encroachment permit applications including outdoor seating in the public way.

On June 16, 2020, the City Council provided direction on modifications to the outdoor seating program.

On July 7, 2020, the City Council expanded the outdoor seating program to include wine tasting rooms and made other minor modifications to the program.

On August 4, 2020, the City Council adopted Urgency Ordinance 2020-005 for the enforcement of provisions and conditions of Encroachment Permits for outdoor dining and authorized the Code Compliance Officer to issue citations. The Council also received a report on the outdoor seating program and provided direction on a number of topics.

ATTACHMENTS:



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

December 15, 2020
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Evan Kort, Associate Planner
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Urgency Ordinance 2020-008 and Ordinance 2020-009 amending and restating Chapter 12.46 (Sidewalk Vending Program) of the Carmel-by-the-Sea Municipal Code.

RECOMMENDATION:

1. Motion to adopt Urgency Ordinance 2020-008 amending and restating Chapter 12.46 (Sidewalk Vending Program) of the Carmel-by-the-Sea Municipal Code.
2. Request a reading of the title of Ordinance 2020-009 amending and restating Chapter 12.46 (Sidewalk Vending Program) of the Carmel-by-the-Sea Municipal Code.
3. Motion to waive further reading and introduce Ordinance 2020-009 amending and restating Chapter 12.46 (Sidewalk Vending Program) of the Carmel-by-the-Sea Municipal Code.

BACKGROUND/SUMMARY:

On September 18, 2018, Governor Brown signed into law Senate Bill ("SB") 946, which adopts state law that imposes limits on how local authorities, including cities, may regulate sidewalk vending. SB 946 is codified in Government Code 51036 and following.

Among other things, SB 946 limits city regulation of sidewalk vending to restrictions that are directly related to objective health, safety, or welfare concerns and prohibits punishment for street vending-related violations unless it is through a civil fine.

SB 946 recognizes, however, that "California has an interest in the regulation of traffic ... whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk," and has acknowledged that there are regulations that are directly related to objective health, safety, or welfare concerns that a city may adopt, which include, but are not limited to, regulations concerning hours of operation, sanitation, sidewalk access, health and vendor permits, compliance with other generally applicable laws, registration requirements, and interference with other special events or permitted activities. In addition, state law recognizes that the health, safety, and welfare interest in providing safe school zones and protecting adjacent streets, sidewalks, and public ways from activities that may disrupt school activities

and the health and safety of schoolchildren.

As a result, on January 8, 2019, the City Council adopted Urgency Ordinance 2018-006, and established a sidewalk vending program (Chapter 12.46 of the Municipal Code) that provided regulations that directly related to the objective health, safety, and welfare of the City, and consistent with state law. The Urgency Ordinance was extended and currently expires on December 20, 2020.

There are some minor revisions to the current Urgency Ordinance which are shown in redline on Attachment 1 to this Staff Report which, in final form, will be attached as Exhibit A to the Urgency Ordinance (Attachment 2) and the Regular Ordinance (Attachment 3). These revisions include the followings:

Section 12.26.030 Permit Required

D. ~~For the purpose of Urgency Ordinance 2019-006, Sidewalk vendor permits shall be issued in order that they are received and deemed complete.~~

Section 12.46.040 Issuance of Permit

C. ~~Sidewalk vendor permits shall expire one year after its issuance, unless renewed on or before the expiration date. All permits shall expire with the expiration of Urgency Ordinance 2019-006 or with the adoption of standard ordinance, whichever comes first.~~

Section 12.46.050 Operating Conditions

M. Sidewalk vendors shall comply with all provisions of ~~CMC Chapter 8.9668~~ [Environmentally Acceptable Materials] of this Code;

~~V. The sale of souvenir merchandise, as defined in CMC 17.14.040, is prohibited; and [moved to Section 12.46.070 Prohibited Activities, subsection 12]~~

~~W. The sale of formula food, as defined in CMC 17.70.020, is prohibited. [moved to Section 12.46.070 Prohibited Activities, subsection 13]~~

Section 12.46.070 Prohibited Activities

A. 7. ~~Harassment of customers as defined in CMC Section 12.46.020 of this Code;~~ [changed to make verb tense consistent].

There are a few other minor revisions that are shown in Exhibit A.

The Urgency Ordinance, if adopted by a 4/5 vote of the City Council will take effect immediately. The Regular Ordinance, if introduced by this first reading, will be brought back to the Council for a second reading and adoption at the Council Meeting in January 2021 and would take effect 30 days thereafter.

Under the proposed Urgency Ordinance and Regular Ordinance, vending permits issued pursuant to Urgency Ordinance Nos. 2018-006, and any extensions, will remain in effect until March 1, 2021, and thereafter will expire unless renewed in accordance with Chapter 12.46.

These ordinances are intended to ratify, amend and restate, Chapter 12.46 of the Municipal Code, and the Regular Ordinance is intended to make the sidewalk vending program permanent subject to potential amendments to the Ordinance in the future.

FISCAL IMPACT:

Costs associated with issuance and administration of a sidewalk vendor permit are proposed to be recovered through a fee as adopted by Resolution and sales tax revenue would be collected as part of the required business license each street vendor is required to maintain. There may be indirect costs associated with additional enforcement of the program.

PRIOR CITY COUNCIL ACTION:

January 8, 2019, the City Council adopted Urgency Ordinance 2018-006, and established a sidewalk vending program (Chapter 12.46 of the Municipal Code). The Urgency Ordinance was extended and currently expires on December 20, 2020

ATTACHMENTS:

Attachment #1 - Redlined Sidewalk Vendor Ordinance (Chapter 12.26)

Attachment #2 - Urgency Ordinance 2020-008 Sidewalk Vending

Attachment #3 - Ordinance 2020-009 Sidewalk Vending

Attachment #4 - Carmel Chapter 12.46

Chapter 12.46
SIDEWALK VENDING PROGRAM

Sections:

12.46.010 Purpose and Findings

12.46.020 Definitions

12.46.030 Permit Required

12.46.040 Issuance of Permit

12.46.050 Operating Conditions

12.46.060 Prohibited Locations

12.46.070 Prohibited Activities

12.46.080 Penalties

12.46.090 Appeals

12.46.010 Purpose and Findings.

A. Purpose. The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter bring the City into compliance with Senate Bill 946 by removing total prohibitions on sidewalk vending activities while still permitting regulation and enforcement of such activities. Sections 53036-53039 of the California Government Code confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The requirements set forth in this chapter are intended to protect the public's health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, are properly licensed with other agencies, and that the total number of allowed vending permits in the commercial and residential districts is limited. This chapter is adopted pursuant to the City's police powers for the purpose of regulating vending on public property.

B. Findings. The City Council hereby finds that limitations on sidewalk vending are necessary to:

1. Comply with State Legislation;
2. Promote the health, safety and welfare;
3. Ensure that the Goals and Policies of the City's General Plan are upheld;
4. Ensure that the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained;

5. Provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services
6. Protect the quality of life of City residents and minimize disruptions to the quiet enjoyment of residential property by restricting noise- making devices associated with sidewalk vending;
7. Ensure no interference to the performance of police, firefighter, and emergency other medical personnel services;
8. Maximize public access in the commercial districts and along the coast; and
9. Reduce exposure to the City for personal injury or property damage claims and litigation.

C. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:

1. The majority of the sidewalks and pathways in the City are under ten (10) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities in compliance with the American with Disabilities Act (ADA);
2. The City's Commercial District and associated sidewalk areas are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes in which most of the segments of sidewalk are under ten (10) feet in width. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the popularity of these tourist destinations and the narrow sidewalks;
3. The majority of the City's Residential District does not contain City-recognized sidewalks and pedestrian access is limited to the roadway. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the lack of recognized sidewalks;
4. Devendorf Park is .60 acres in size and offers passive types of uses such as picnic. A limit on the number of sidewalk vending permits for Devendorf Park is necessary to promote public health, safety and welfare, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
5. The Police Department and Fire Department contain critical infrastructure and restrictions around these facilities are necessary to ensuring health, safety and welfare of the public;

6. Carmel Beach is a coastal and scenic resource and restrictions of sidewalk vending on and around the beach are necessary to protect this resource;
7. The Scenic Pathway is a narrow dirt path located adjacent to Carmel Beach and is a popular tourist destination with high pedestrian traffic volumes. Restrictions on sidewalk vending along the path are necessary to protect the public from injury given the popularity of these tourist destinations and the multiple litigation experiences of the City pertaining to this area; and
8. Mission Trail Nature Preserve is natural resource designated as an environmentally sensitive habitat area. Restrictions of sidewalk vending at this location are necessary to preserve this natural resource.

12.46.20 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the California Business and Professions Code, California Vehicle Code, or California Government Code.

- A. "Beach" means any public oceanfront, or bay front beach within the City.
- B. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.
- C. "City" means the City of Carmel-by-the-Sea.
- D. "Code" mean the City of Carmel-by-the-Sea Municipal Code.
- E. "Commercial District" means any area zoned exclusively as commercial in Title 17 of the Municipal Code.
- F. "Devendorf Park" means the park space located at the northwest corner of Junipero and Ocean Avenues, excluding the sidewalks around the park grounds.
- G. "Food" means any item provided in Health and Safety Code Section 113781, or any successor section.
- H. "Harassment" mean any form of unauthorized or unpermitted touching, verbal abuse, blockage of pathways or interference with pedestrian traffic.
- I. "Human Powered Device" shall mean any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart,

other non-motorized conveyance, or other wheeled container or mechanism, or from one's person.

- J. "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise.
- K. "Owner" shall mean any person or entity owning, or otherwise controlling the operation of any business or activity involving Vending on Public Property.
- L. "Park" means public parkland located within City limits including Devendorf Park, Piccadilly Park, First Murphy Park, Forest Hill Park and Vista Lobos Park.
- M. "Public Property" shall mean any real property, public easement, public street, street median, alley, parkway, public sidewalk, or other interest therein owned, held, leased, operated or otherwise controlled by the City.
- N. "Residential District" means any area zoned exclusively as residential in Title 17 of the Municipal Code.
- O. "Roaming Sidewalk Vendor" shall mean a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.
- P. "Service Business" means a commercial enterprise that provides work performed by an individual or team for the benefit of its customers.
- Q. "Scenic Pathway" means the dirt pathway located westerly and parallel to Scenic Road and adjacent to the beach.
- R. "Sidewalk" means that portion other than the roadway, set apart by curbs, barriers, markings or other delineation specifically.
- S. "Sidewalk Vendor" shall mean a person who vends goods or merchandise upon a public sidewalk, including, but not limited to vending from a structure, stand, display, showcase, rack, human powered device or other means.
- T. "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities.
- U. "Special Event" shall mean a City permitted event including, but not limited to, festivals, art shows, and/or cultural events.
- V. "Stationary Sidewalk Vendor" shall mean a sidewalk vendor who vends from a fixed location.
- W. "Vend" or "Vending" shall mean any act of hawking, operating noisemaking devices to attract attention to the vendor, or the displaying, selling, or offering for sale of

any displayed goods or merchandise to the public from any carrying device, box, bag, stand, human powered device, or from a vehicle.

12.46.030 Permit Required

A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Community Planning and Building Director, or the Director's designee, under this chapter. The permit fee ~~is \$425.00~~ shall be established by resolution of the City Council.

B. No more than ten (10) permits shall be issued by the City that allow sidewalk vending in the commercial or residential districts, including all city-owned parks other than Devendorf Park, in order to protect the public health, safety, and welfare. No more than one commercial/residential permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

C. No more than three (3) permits shall be issued by the City that allow sidewalk vending in Devendorf Park in order to prevent undue concentrations of commercial activity and protect the character of the park. No more than one Devendorf Park permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

D. ~~For the purpose of Urgency Ordinance 2019-006,~~ Sidewalk vendor permits shall be issued in the order that they are received and deemed complete.

E. A written application for a sidewalk vendor permit shall be filed with the Community Planning and Building Director, or the Director's designee, on a form provided by the City, and at a minimum, shall contain the following information:

1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
4. The location(s) in the City where the sidewalk vendor intends to operate;
5. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;

7. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
8. Whether the sidewalk vendor will be selling food, merchandise, or both;
9. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
10. If the vendor is selling merchandise, a description of the merchandise to be sold;
11. Proof of a valid Health permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code, if Vending food;
12. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sub-location, which shall be maintained for the duration of the sidewalk vendor's permit;
13. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
14. A certification that, to their knowledge and belief, the information contained within the application is true;
15. An acknowledgement that the use of public property as authorized by State Legislation shall be at the sidewalk vendor's own risk, and the sidewalk vendor uses public property at their own risk;
16. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager and shall name the City as an also named insured under that policy;
17. Any other relevant information required by the Community Planning and Building Director, or the Director's designee; and
18. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or

indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding.

C.F. Each application for a sidewalk vendor permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, the permittee shall also obtain a City business license to carry on the activities authorized by said permit.

12.46.040 Issuance of Permit

A. Within thirty (30) calendar days of receiving a complete application, the Community Planning and Building Director, or the Director's designee, may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he/~~she~~ ~~or she~~ finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare, nor shall it violate the ADA rules, restrictions and regulations;
2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;
4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;
5. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;
6. The sidewalk vendor's application contains all required information;
7. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;

8. The sidewalk vendor has satisfied all the requirements of this chapter;
9. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
10. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
11. The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, as determined by the City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured; and
12. The sidewalk vendor has satisfactorily provided all information requested by the Community Planning and Building Director, or the Director's designee, to consider the vendor's application.

B. A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. ~~Sidewalk vendor permits shall expire one year after issuance, unless renewed on or before the expiration date. All permits shall expire with the expiration of Urgency Ordinance 2019-006 or with the adoption of standard ordinance, whichever comes first.~~

12.46.050 Operating Conditions

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

A. All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section and shall be in possession of a current Health and Safety permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code and California Seller's Permit;

B. The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person;

C. Only one sidewalk vendor is permitted to operate per permit;

- D. The sidewalk vendor shall submit a monthly report to the Community Planning and Building Department identifying the number of hours operated.
- E. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit;
- F. Sidewalk vendors shall not leave their sidewalk vending receptacle unattended for any reason except for temporary use of the restroom;
- G. Sidewalk vending receptacles shall not be stored on public property and shall be removed from City property when not in active use by a sidewalk vendor;
- H. All sidewalk vendors shall allow a police officer, firefighter, life safety services officer, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the street vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food;
- I. Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of forty-eight (48) inches, a total width of thirty-two (32) inches, and a total length of forty-eight (48) inches. An exception is provided for umbrellas or other means of cover and shall be no larger than the minimum required by the Monterey County Health Department; merchandise shall not be affixed to any cover;
- J. No sidewalk vending receptacle shall contain explosive or hazardous materials, other than propane necessary for heating purposes;
- K. Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation;
- L. Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that is discharged on public property. Failure to comply will result in the City taking appropriate action to clean the discharge at the vendor's expense. The vendor permit will thereafter be suspended until such time as the expense associated with cleanup has been reimbursed to the City;
- M. Sidewalk vendors shall comply with all provisions of CMC Chapter 8.9668 [Environmentally Acceptable Materials] of this Code;
- N. Sidewalk vendors shall comply with the Federal Americans with Disabilities Act of 1990 and amendments thereto, and state disability rights laws;
- O. Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area;

P. Sidewalk vendors shall not use any noise making devices in association with the sale, display or offering for sale of items, such as megaphones, bells, whistles, and the like;

Q. Sidewalk vendors shall comply with the noise standards provided in Chapter 8.56 of this Code, or any successor chapters;

R. In parks, sidewalk vendors shall not approach persons to sell food or merchandise;

S. All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person;

T. Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign;

U. The sidewalk vendor is permitted a maximum of one sign not exceeding three (3) square feet in area; and no free-standing sign shall be placed on a public street or sidewalk;

~~V. The sale of souvenir merchandise, as defined in CMC 17.14.040, is prohibited; and~~

~~W. The sale of formula food, as defined in CMC 17.70.020, is prohibited.~~

12.46.060 Prohibited Locations

A. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

1. Carmel Beach and the adjacent Scenic Pathway;
2. Mission Trail Nature Preserve;
3. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, intra-block walkway, beach, square, street, street end, or parking lot;
4. Within one hundred (100) feet for the Police and Fire Departments
5. Within fifty (50) feet of:
 - a. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet;
 - b. An area designated for a special event permit issued by the City, during the limited duration of the special event, if the City provides the sidewalk vendor any notice, business interruption mitigation, or

other rights the City provided to any affected businesses or property owners under the City's special event permit; or

- c. The Del Mar Parking Lot including the adjacent sidewalks and restroom area.

6. Within twenty-five (25) feet of:

- a. The monuments located within Devendorf Park;
- b. Another sidewalk vendor; or
- c. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.

7. Within five (5) feet of any:

- a. Business entrance and/or display window;
- b. Fire hydrant;
- c. Intersection of a street and a sidewalk;
- de. Curb which has been designated as white, yellow, blue, or red zone, or a bus zone;
- ef. Driveway, alley, or entrance to a parking lot or parking garage; or
- fg. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.

8. Sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities on any portion of a commercial district sidewalk that has a width of less than ten (10) feet.

9. A sidewalk vendor may pass through narrower portions of commercial district sidewalk in order to reach their destination, but shall not conduct business on any portion of sidewalk that is less than ten (10) feet in width.

10. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire; or.

B. Stationary sidewalk vendors shall not operate in the residential zoning districts.

C. Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

12.46.070 Prohibited Activities

A. Sidewalk vendors shall not engage in any of the following activities:

1. Renting merchandise to customers;
2. Providing a service that is neither defined a merchandise or food;
3. Displaying or advertising merchandise or food that is not available for immediate sale;
4. Selling of alcohol, cannabis, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or cannabis;
5. Using an open flame or charcoal-fueled device on or within any sidewalk vending receptacle;
6. Using an electrical outlet or power source, or water sources, that is owned by the City or another person other than the sidewalk vendor;
7. Harass~~ingment~~ment of customers as defined in CMC Section 12.46.020 of this Code;
8. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale;
9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase;
10. Touching the person(s) being offered food or merchandise without that person(s)' consent;
11. Placing their sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities;
12. Conducting the retail sales of souvenirs, in accordance with Section 17.14.040.T.13 of this Code; or
13. Operating as a formula food establishment, as defined in Section 17.70.020 of this Code.

B. Sidewalk vending is permitted during the following times:

1. Within the commercial districts, including any parks contained within these districts, between the hours of 8:00 a.m. and 9:00 p.m. daily.
2. Within residential districts, including any parks contained within these districts, between the hours of 9:00 a.m. and 6:00 p.m. daily.

12.46.080 Penalties

A. As prescribed by State Legislation, violations of this chapter may not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation and revocation structure.

B. Except as otherwise provided in this chapter, any violation of this chapter shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation;
2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation;
3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

C. If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid [sidewalk vendor](#) permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation;
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation;
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.;

D. Upon proof of a valid [sidewalk vendor](#) permit issued by the City, the administrative fines set forth in Subsection 12.46.~~070080.(BC)~~ shall be reduced to the administrative fines set forth in Subsection 12.46.~~070080.(A)B;~~ and.

E. The Community Planning and Building Director, or the Director's designee, may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

12.46.090 Appeals

A. All appeals of administrative citations shall be conducted in accordance with Section 18.04.[150](#) of this Code.

B. Decisions of the Community Planning and Building Director, or the Director's designee, to revoke a permit shall be appealed in the following manner:

1. Request for an appeal hearing shall be processed in accordance with Section 18.04.090 of this Code, or any successor section;
2. Decisions that are appealed shall not become effective until the appeal is resolved;
3. Appeals of decisions shall be made in writing on forms provided by the City;
4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 18.04.110 of this Code; and
5. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final.

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

URGENCY ORDINANCE NO. 2020-008

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AMENDING AND RESTATING CHAPTER 12.46 (SIDEWALK VENDING PROGRAM) OF THE CARMEL-BY-THE-SEA MUNICIPAL CODE

WHEREAS, on September 18, 2018, Governor Brown signed into law Senate Bill (“SB”) 946, which adopts state law that imposes limits on how local authorities, including cities, may regulate sidewalk vending. SB 946 is codified in Government Code 51036 and following; and

WHEREAS, Among other things, SB 946 limits city regulation of sidewalk vending to restrictions that are directly related to objective health, safety, or welfare concerns and prohibits punishment for street vending-related violations unless it is through a civil fine ; and

WHEREAS, SB 946 recognizes, however, that “California has an interest in the regulation of traffic ... whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk,” and has acknowledged that there are regulations that are directly related to objective health, safety, or welfare concerns that a city may adopt, which include, but are not limited to, regulations concerning hours of operation, sanitation, sidewalk access, health and vendor permits, compliance with other generally applicable laws, registration requirements, and interference with other special events or permitted activities. In addition, state law recognizes that the health, safety, and welfare interest in providing safe school zones and protecting adjacent streets, sidewalks, and public ways from activities that may disrupt school activities and the health and safety of schoolchildren; and

WHEREAS, As a result, on January 8, 2019, the City Council adopted Urgency Ordinance 2018-006, and established a sidewalk vending program (Chapter 12.46 of the municipal code) that provided regulations that directly related to the objective health, safety, and welfare of the City, and consistent with state law. The Urgency Ordinance was extended and currently expires on December 20, 2020. The City desires to ratify, amend and restate, Chapter 12.46 of the municipal code, and make its sidewalk vending program permanent.

WHEREAS, The City Council has the power under Government Code sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, and is passed by a four-fifths vote of the City Council; and

WHEREAS, Because of the impending expiration of the Urgency Ordinance 2018-006, and the disruptions to regular city hall operations caused by COVID-19, it is necessary to adopt this urgency ordinance and have it take effect immediately to avoid a lapse in the existing sidewalk vending regulations. If the City fails to do, then the existing sidewalk vending regulations may lapse, and as a result, the City will be limited in how it may regulate sidewalk vending, and the public peace, health and safety may be impacted; and

WHEREAS, To address the danger to public health, safety, and general welfare presented by the impending expiration of the current sidewalk vending regulations, the City Council desires to adopt this ordinance as an urgency ordinance, effective immediately, pursuant to Government Code sections 36934 and 36937.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA DOES ORDAIN AS FOLLOWS:

SECTION 1. Environmental Review. The City Council exercises its independent judgment and finds that the proposed ordinance is not subject to California Environmental Quality Act (CEQA), pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the subject regulations have no potential for resulting in any significant physical change to the environment, either directly or indirectly.

SECTION 2. Chapter 12.46 (Sidewalk Vending Program). Chapter 12.46 of the Carmel-by-the-Sea Municipal Code is amended and restated as set forth in Exhibit A. Sidewalk vending permits issued pursuant to Urgency Ordinance Nos. 2018-006, 2019-005 and 2019-006 will remain in effect until March 1, 2021, and thereafter will expire unless renewed in accordance with Chapter 12.46.

SECTION 3. Effective Date. As an urgency ordinance, this ordinance takes effective immediately upon four-fifths vote of the City Council, in accordance with Government Code sections 36934 and 36937.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Repeal. Prior Urgency Ordinances on the subject of street vending including, but not limited to, Urgency Ordinance No. 2018-006, Urgency Ordinance No. 2019-005 and Urgency Ordinance No. 2019-006 are hereby repealed.

SECTION 6. Publication. The City Clerk is directed to certify this Urgency Ordinance and cause it to be published in the manner required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL BY-THE-SEA this 15th day of December, 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

Chapter 12.46 SIDEWALK VENDING PROGRAM

Sections:

12.46.010 Purpose and Findings

12.46.020 Definitions

12.46.030 Permit Required

12.46.040 Issuance of Permit

12.46.050 Operating Conditions

12.46.060 Prohibited Locations

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12.46.080 Penalties

12.46.090 Appeals

12.46.010 Purpose and Findings.

A. Purpose. The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter bring the City into compliance with Senate Bill 946 by removing total prohibitions on sidewalk vending activities while still permitting regulation and enforcement of such activities. Sections 53036-53039 of the California Government Code confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The requirements set forth in this chapter are intended to protect the public's health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, are properly licensed with other agencies, and that the total number of allowed vending permits in the commercial and residential districts is limited. This chapter is adopted pursuant to the City's police powers for the purpose of regulating vending on public property.

B. Findings. The City Council hereby finds that limitations on sidewalk vending are necessary to:

1. Comply with State Legislation;
2. Promote the health, safety and welfare;
3. Ensure that the Goals and Policies of the City's General Plan are upheld;
4. Ensure that the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained;

5. Provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services
6. Protect the quality of life of City residents and minimize disruptions to the quiet enjoyment of residential property by restricting noise- making devices associated with sidewalk vending;
7. Ensure no interference to the performance of police, firefighter, and emergency other medical personnel services;
8. Maximize public access in the commercial districts and along the coast; and
9. Reduce exposure to the City for personal injury or property damage claims and litigation.

C. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:

1. The majority of the sidewalks and pathways in the City are under ten (10) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities in compliance with the American with Disabilities Act (ADA);
2. The City's Commercial District and associated sidewalk areas are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes in which most of the segments of sidewalk are under ten (10) feet in width. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the popularity of these tourist destinations and the narrow sidewalks;
3. The majority of the City's Residential District does not contain City- recognized sidewalks and pedestrian access is limited to the roadway. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the lack of recognized sidewalks;
4. Devendorf Park is .60 acres in size and offers passive types of uses such as picnic. A limit on the number of sidewalk vending permits for Devendorf Park is necessary to promote public health, safety and welfare, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
5. The Police Department and Fire Department contain critical infrastructure and restrictions around these facilities are necessary to ensuring health, safety and welfare of the public;

6. Carmel Beach is a coastal and scenic resource and restrictions of sidewalk vending on and around the beach are necessary to protect this resource;
7. The Scenic Pathway is a narrow dirt path located adjacent to Carmel Beach and is a popular tourist destination with high pedestrian traffic volumes. Restrictions on sidewalk vending along the path are necessary to protect the public from injury given the popularity of these tourist destinations and the multiple litigation experiences of the City pertaining to this area; and
8. Mission Trail Nature Preserve is natural resource designated as an environmentally sensitive habitat area. Restrictions of sidewalk vending at this location are necessary to preserve this natural resource.

12.46.20 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the California Business and Professions Code, California Vehicle Code, or California Government Code.

- A. "Beach" means any public oceanfront, or bay front beach within the City.
- B. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.
- C. "City" means the City of Carmel-by-the-Sea.
- D. "Code" mean the City of Carmel-by-the-Sea Municipal Code.
- E. "Commercial District" means any area zoned exclusively as commercial in Title 17 of the Municipal Code.
- F. "Devendorf Park" means the park space located at the northwest corner of Junipero and Ocean Avenues, excluding the sidewalks around the park grounds.
- G. "Food" means any item provided in Health and Safety Code Section 113781, or any successor section.
- H. "Harassment" mean any form of unauthorized or unpermitted touching, verbal abuse, blockage of pathways or interference with pedestrian traffic.

- I. "Human Powered Device" shall mean any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart, other non-motorized conveyance, or other wheeled container or mechanism, or from one's person.
- J. "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise.
- K. "Owner" shall mean any person or entity owning, or otherwise controlling the operation of any business or activity involving Vending on Public Property.
- L. "Park" means public parkland located within City limits including Devendorf Park, Piccadilly Park, First Murphy Park, Forest Hill Park and Vista Lobos Park.
- M. "Public Property" shall mean any real property, public easement, public street, street median, alley, parkway, public sidewalk, or other interest therein owned, held, leased, operated or otherwise controlled by the City.
- N. "Residential District" means any area zoned exclusively as residential in Title 17 of the Municipal Code.
- O. "Roaming Sidewalk Vendor" shall mean a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.
- P. "Service Business" means a commercial enterprise that provides work performed by an individual or team for the benefit of its customers.
- Q. "Scenic Pathway" means the dirt pathway located westerly and parallel to Scenic Road and adjacent to the beach.
- R. "Sidewalk" means that portion other than the roadway, set apart by curbs, barriers, markings or other delineation specifically.
- S. "Sidewalk Vendor" shall mean a person who vends goods or merchandise upon a public sidewalk, including, but not limited to vending from a structure, stand, display, showcase, rack, human powered device or other means.
- T. "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities.
- U. "Special Event" shall mean a City permitted event including, but not limited to, festivals, art shows, and/or cultural events.

- V. "Stationary Sidewalk Vendor" shall mean a sidewalk vendor who vends from a fixed location.
- W. "Vend" or "Vending" shall mean any act of hawking, operating noisemaking devices to attract attention to the vendor, or the displaying, selling, or offering for sale of any displayed goods or merchandise to the public from any carrying device, box, bag, stand, human powered device, or from a vehicle.

12.46.030 Permit Required

- A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Community Planning and Building Director, or the Director's designee, under this chapter. The permit fee shall be established by resolution of the City Council.
- B. No more than ten (10) permits shall be issued by the City that allow sidewalk vending in the commercial or residential districts, including all city-owned parks other than Devendorf Park, in order to protect the public health, safety, and welfare. No more than one commercial/residential permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.
- C. No more than three (3) permits shall be issued by the City that allow sidewalk vending in Devendorf Park in order to prevent undue concentrations of commercial activity and protect the character of the park. No more than one Devendorf Park permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.
- D. Sidewalk vendor permits shall be issued in the order that they are received and deemed complete.
- E. A written application for a sidewalk vendor permit shall be filed with the Community Planning and Building Director, or the Director's designee, on a form provided by the City, and at a minimum, shall contain the following information:
1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
 2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
 3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
 4. The location(s) in the City where the sidewalk vendor intends to operate;

5. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;
7. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
8. Whether the sidewalk vendor will be selling food, merchandise, or both;
9. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
10. If the vendor is selling merchandise, a description of the merchandise to be sold;
11. Proof of a valid Health permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code, if Vending food;
12. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sub- location, which shall be maintained for the duration of the sidewalk vendor's permit;
13. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
14. A certification that, to their knowledge and belief, the information contained within the application is true;
15. An acknowledgement that the use of public property as authorized by State Legislation shall be at the sidewalk vendor's own risk, and the sidewalk vendor uses public property at their own risk;
16. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager and shall name the City as an also named insured under that policy;
17. Any other relevant information required by the Community Planning and Building Director, or the Director's designee; and

18. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding.

F. Each application for a sidewalk vendor permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, the permittee shall also obtain a City business license to carry on the activities authorized by said permit.

12.46.040 Issuance of Permit

A. Within thirty (30) calendar days of receiving a complete application, the Community Planning and Building Director, or the Director's designee, may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he/she finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare, nor shall it violate the ADA rules, restrictions and regulations;
2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;
4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;
5. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;

6. The sidewalk vendor's application contains all required information;
7. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;
8. The sidewalk vendor has satisfied all the requirements of this chapter;
9. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
10. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
11. The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, as determined by the City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured; and
12. The sidewalk vendor has satisfactorily provided all information requested by the Community Planning and Building Director, or the Director's designee, to consider the vendor's application.

B. A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. Sidewalk vendor permits shall expire one year after issuance, unless renewed on or before the expiration date.

12.46.050 Operating Conditions

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

A. All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section and shall be in possession of a current Health and Safety permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code and California Seller's Permit.

B. The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person.

C. Only one sidewalk vendor is permitted to operate per permit.

- D. The sidewalk vendor shall submit a monthly report to the Community Planning and Building Department identifying the number of hours operated.
- E. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit.
- F. Sidewalk vendors shall not leave their sidewalk vending receptacle unattended for any reason except for temporary use of the restroom.
- G. Sidewalk vending receptacles shall not be stored on public property and shall be removed from City property when not in active use by a sidewalk vendor.
- H. All sidewalk vendors shall allow a police officer, firefighter, life safety services officer, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the street vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.
- I. Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of forty-eight (48) inches, a total width of thirty-two (32) inches, and a total length of forty-eight (48) inches. An exception is provided for umbrellas or other means of cover and shall be no larger than the minimum required by the Monterey County Health Department; merchandise shall not be affixed to any cover.
- J. No sidewalk vending receptacle shall contain explosive or hazardous materials, other than propane necessary for heating purposes.
- K. Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.
- L. Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that is discharged on public property. Failure to comply will result in the City taking appropriate action to clean the discharge at the vendor's expense. The vendor permit will thereafter be suspended until such time as the expense associated with cleanup has been reimbursed to the City.
- M. Sidewalk vendors shall comply with all provisions of Chapter 8.68 [Environmentally Acceptable Materials] of this Code.
- N. Sidewalk vendors shall comply with the Federal Americans with Disabilities Act of 1990 and amendments thereto, and state disability rights laws.

- O. Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.
- P. Sidewalk vendors shall not use any noise making devices in association with the sale, display or offering for sale of items, such as megaphones, bells, whistles, and the like.
- Q. Sidewalk vendors shall comply with the noise standards provided in Chapter 8.56 of this Code, or any successor chapters.
- R. In parks, sidewalk vendors shall not approach persons to sell food or merchandise.
- S. All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person.
- T. Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign.
- U. The sidewalk vendor is permitted a maximum of one sign not exceeding three (3) square feet in area; and no free-standing sign shall be placed on a public street or sidewalk.

12.46.060 Prohibited Locations

- A. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:
 - 1. Carmel Beach and the adjacent Scenic Pathway.
 - 2. Mission Trail Nature Preserve.
 - 3. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, intra-block walkway, beach, square, street, street end, or parking lot.
 - 4. Within one hundred (100) feet for the Police and Fire Departments.
 - 5. Within fifty (50) feet of:
 - a. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.
 - b. An area designated for a special event permit issued by the City, during the limited duration of the special event, if the City provides the sidewalk vendor any notice, business interruption mitigation, or other rights the City provided to any affected businesses or property owners under the City's special event permit.

- c. The Del Mar Parking Lot including the adjacent sidewalks and restroom area.
 6. Within twenty-five (25) feet of:
 - a. The monuments located within Devendorf Park.
 - b. Another sidewalk vendor.
 - c. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.
 7. Within five (5) feet of any:
 - a. Business entrance and/or display window.
 - b. Fire hydrant.
 - c. Intersection of a street and a sidewalk.
 - d. Curb which has been designated as white, yellow, blue, or red zone, or a bus zone.
 - e. Driveway, alley, or entrance to a parking lot or parking garage.
 - f. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.
 8. Sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities on any portion of a commercial district sidewalk that has a width of less than ten (10) feet.
 9. A sidewalk vendor may pass through narrower portions of commercial district sidewalk in order to reach their destination, but shall not conduct business on any portion of sidewalk that is less than ten (10) feet in width.
 10. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- B. Stationary sidewalk vendors shall not operate in the residential zoning districts.
- C. Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

12.46.070 Prohibited Activities

- A. Sidewalk vendors shall not engage in any of the following activities:
1. Renting merchandise to customers.
 2. Providing a service that is neither defined a merchandise or food.
 3. Displaying or advertising merchandise or food that is not available for immediate sale.
 4. Selling of alcohol, cannabis, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or cannabis.
 5. Using an open flame or charcoal-fueled device on or within any sidewalk vending receptacle.
 6. Using an electrical outlet or power source, or water sources, that is owned by the City or another person other than the sidewalk vendor.
 7. Harassing customers as defined in Section 12.46.020 of this Code.
 8. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale.
 9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase.
 10. Touching the person(s) being offered food or merchandise without that person(s)' consent.
 11. Placing their sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities.
 12. Conducting the retail sales of souvenirs, in accordance with Section 17.14.040.T.13 of this Code.
 13. Operating as a formula food establishment, as defined in Section 17.70.020 of this Code.
- B. Sidewalk vending is permitted during the following times:
1. Within the commercial districts, including any parks contained within these districts, between the hours of 8:00 a.m. and 9:00 p.m. daily.

2. Within residential districts, including any parks contained within these districts, between the hours of 9:00 a.m. and 6:00 p.m. daily.

12.46.080 Penalties

A. As prescribed by State Legislation, violations of this chapter may not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation and revocation structure.

B. Except as otherwise provided in this chapter, any violation of this chapter shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

C. If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid sidewalk vendor permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

D. Upon proof of a valid sidewalk vendor permit issued by the City, the administrative fines set forth in Subsection 12.46.080.C shall be reduced to the administrative fines set forth in Subsection 12.46.080.B.

E. The Community Planning and Building Director, or the Director's designee, may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

12.46.090 Appeals

A. All appeals of administrative citations shall be conducted in accordance with Section 18.04.150 of this Code.

B. Decisions of the Community Planning and Building Director, or the Director's designee, to revoke a permit shall be appealed in the following manner:

1. Request for an appeal hearing shall be processed in accordance with Section 18.04.090 of this Code, or any successor section.
2. Decisions that are appealed shall not become effective until the appeal is resolved.
3. Appeals of decisions shall be made in writing on forms provided by the City.
4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 18.04.110 of this Code.
5. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final.

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

ORDINANCE NO. 2020-009

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
AMENDING AND RESTATING CHAPTER 12.46 (SIDEWALK VENDING PROGRAM)
OF THE CARMEL-BY-THE-SEA MUNICIPAL CODE**

WHEREAS, on September 18, 2018, Governor Brown signed into law Senate Bill (“SB”) 946, which adopts state law that imposes limits on how local authorities, including cities, may regulate sidewalk vending. SB 946 is codified in Government Code 51036 and following; and

WHEREAS, among other things, SB 946 limits city regulation of sidewalk vending to restrictions that are directly related to objective health, safety, or welfare concerns and prohibits punishment for street vending-related violations unless it is through a civil fine; and

WHEREAS, SB 946 recognizes, however, that “California has an interest in the regulation of traffic ... whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk,” and has acknowledged that there are regulations that are directly related to objective health, safety, or welfare concerns that a city may adopt, which include, but are not limited to, regulations concerning hours of operation, sanitation, sidewalk access, health and vendor permits, compliance with other generally applicable laws, registration requirements, and interference with other special events or permitted activities. In addition, state law recognizes that the health, safety, and welfare interest in providing safe school zones and protecting adjacent streets, sidewalks, and public ways from activities that may disrupt school activities and the health and safety of schoolchildren; and

WHEREAS, as a result, on January 8, 2019, the City Council adopted Urgency Ordinance 2018-006, and established a sidewalk vending program (Chapter 12.46 of the municipal code) that provided regulations that directly related to the objective health, safety, and welfare of the City, and consistent with state law. The Urgency Ordinance was extended and currently expires on December 20, 2020. The City desires to ratify, amend and restate, Chapter 12.46 of the municipal code, and make its sidewalk vending program permanent.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA DOES ORDAIN AS FOLLOWS:

SECTION 1. Environmental Review. The City Council exercises its independent judgment and finds that the proposed ordinance is not subject to California Environmental Quality Act (CEQA), pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the subject regulations have no potential for resulting in any significant physical change to the environment, either directly or indirectly.

SECTION 2. Chapter 12.46 (Sidewalk Vending Program). Chapter 12.46 of the Carmel-by-the-Sea Municipal Code is amended and restated as set forth in Exhibit A. Sidewalk vending permits issued pursuant to Urgency Ordinance Nos. 2018-006, 2019-005 and 2019-006 will remain in effect until March 1, 2021, and thereafter will expire unless renewed in accordance with Chapter 12.46.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Repeal. Except for the Urgency Ordinance adopted regarding street vending on December 8, 2020, prior Urgency Ordinances on the subject of street vending including, but not limited to, Urgency Ordinance No. 2018-006, Urgency Ordinance No. 2019-005 and Urgency Ordinance No. 2019-006 are hereby repealed.

SECTION 5. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL BY-
THE-SEA this _____ day of _____, _____.**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

Chapter 12.46 SIDEWALK VENDING PROGRAM

Sections:

12.46.010 Purpose and Findings

12.46.020 Definitions

12.46.030 Permit Required

12.46.040 Issuance of Permit

12.46.050 Operating Conditions

12.46.060 Prohibited Locations

12.46.070 Prohibited Activities

12.46.080 Penalties

12.46.090 Appeals

12.46.010 Purpose and Findings.

A. Purpose. The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter bring the City into compliance with Senate Bill 946 by removing total prohibitions on sidewalk vending activities while still permitting regulation and enforcement of such activities. Sections 53036-53039 of the California Government Code confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The requirements set forth in this chapter are intended to protect the public's health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, are properly licensed with other agencies, and that the total number of allowed vending permits in the commercial and residential districts is limited. This chapter is adopted pursuant to the City's police powers for the purpose of regulating vending on public property.

B. Findings. The City Council hereby finds that limitations on sidewalk vending are necessary to:

1. Comply with State Legislation;
2. Promote the health, safety and welfare;
3. Ensure that the Goals and Policies of the City's General Plan are upheld;
4. Ensure that the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained;

5. Provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services
 6. Protect the quality of life of City residents and minimize disruptions to the quiet enjoyment of residential property by restricting noise- making devices associated with sidewalk vending;
 7. Ensure no interference to the performance of police, firefighter, and emergency other medical personnel services;
 8. Maximize public access in the commercial districts and along the coast; and
 9. Reduce exposure to the City for personal injury or property damage claims and litigation.
- C. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:
1. The majority of the sidewalks and pathways in the City are under ten (10) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities in compliance with the American with Disabilities Act (ADA);
 2. The City's Commercial District and associated sidewalk areas are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes in which most of the segments of sidewalk are under ten (10) feet in width. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the popularity of these tourist destinations and the narrow sidewalks;
 3. The majority of the City's Residential District does not contain City- recognized sidewalks and pedestrian access is limited to the roadway. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the lack of recognized sidewalks;
 4. Devendorf Park is .60 acres in size and offers passive types of uses such as picnic. A limit on the number of sidewalk vending permits for Devendorf Park is necessary to promote public health, safety and welfare, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
 5. The Police Department and Fire Department contain critical infrastructure and restrictions around these facilities are necessary to ensuring health, safety and welfare of the public;

6. Carmel Beach is a coastal and scenic resource and restrictions of sidewalk vending on and around the beach are necessary to protect this resource;
7. The Scenic Pathway is a narrow dirt path located adjacent to Carmel Beach and is a popular tourist destination with high pedestrian traffic volumes. Restrictions on sidewalk vending along the path are necessary to protect the public from injury given the popularity of these tourist destinations and the multiple litigation experiences of the City pertaining to this area; and
8. Mission Trail Nature Preserve is natural resource designated as an environmentally sensitive habitat area. Restrictions of sidewalk vending at this location are necessary to preserve this natural resource.

12.46.20 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the California Business and Professions Code, California Vehicle Code, or California Government Code.

- A. "Beach" means any public oceanfront, or bay front beach within the City.
- B. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.
- C. "City" means the City of Carmel-by-the-Sea.
- D. "Code" mean the City of Carmel-by-the-Sea Municipal Code.
- E. "Commercial District" means any area zoned exclusively as commercial in Title 17 of the Municipal Code.
- F. "Devendorf Park" means the park space located at the northwest corner of Junipero and Ocean Avenues, excluding the sidewalks around the park grounds.
- G. "Food" means any item provided in Health and Safety Code Section 113781, or any successor section.
- H. "Harassment" mean any form of unauthorized or unpermitted touching, verbal abuse, blockage of pathways or interference with pedestrian traffic.

- I. "Human Powered Device" shall mean any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart, other non-motorized conveyance, or other wheeled container or mechanism, or from one's person.
- J. "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise.
- K. "Owner" shall mean any person or entity owning, or otherwise controlling the operation of any business or activity involving Vending on Public Property.
- L. "Park" means public parkland located within City limits including Devendorf Park, Piccadilly Park, First Murphy Park, Forest Hill Park and Vista Lobos Park.
- M. "Public Property" shall mean any real property, public easement, public street, street median, alley, parkway, public sidewalk, or other interest therein owned, held, leased, operated or otherwise controlled by the City.
- N. "Residential District" means any area zoned exclusively as residential in Title 17 of the Municipal Code.
- O. "Roaming Sidewalk Vendor" shall mean a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.
- P. "Service Business" means a commercial enterprise that provides work performed by an individual or team for the benefit of its customers.
- Q. "Scenic Pathway" means the dirt pathway located westerly and parallel to Scenic Road and adjacent to the beach.
- R. "Sidewalk" means that portion other than the roadway, set apart by curbs, barriers, markings or other delineation specifically.
- S. "Sidewalk Vendor" shall mean a person who vends goods or merchandise upon a public sidewalk, including, but not limited to vending from a structure, stand, display, showcase, rack, human powered device or other means.
- T. "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities.
- U. "Special Event" shall mean a City permitted event including, but not limited to, festivals, art shows, and/or cultural events.

- V. "Stationary Sidewalk Vendor" shall mean a sidewalk vendor who vends from a fixed location.
- W. "Vend" or "Vending" shall mean any act of hawking, operating noisemaking devices to attract attention to the vendor, or the displaying, selling, or offering for sale of any displayed goods or merchandise to the public from any carrying device, box, bag, stand, human powered device, or from a vehicle.

12.46.030 Permit Required

- A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Community Planning and Building Director, or the Director's designee, under this chapter. The permit fee shall be established by resolution of the City Council.
- B. No more than ten (10) permits shall be issued by the City that allow sidewalk vending in the commercial or residential districts, including all city-owned parks other than Devendorf Park, in order to protect the public health, safety, and welfare. No more than one commercial/residential permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.
- C. No more than three (3) permits shall be issued by the City that allow sidewalk vending in Devendorf Park in order to prevent undue concentrations of commercial activity and protect the character of the park. No more than one Devendorf Park permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.
- D. Sidewalk vendor permits shall be issued in the order that they are received and deemed complete.
- E. A written application for a sidewalk vendor permit shall be filed with the Community Planning and Building Director, or the Director's designee, on a form provided by the City, and at a minimum, shall contain the following information:
1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
 2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
 3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
 4. The location(s) in the City where the sidewalk vendor intends to operate;

5. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;
7. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
8. Whether the sidewalk vendor will be selling food, merchandise, or both;
9. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
10. If the vendor is selling merchandise, a description of the merchandise to be sold;
11. Proof of a valid Health permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code, if Vending food;
12. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sub- location, which shall be maintained for the duration of the sidewalk vendor's permit;
13. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
14. A certification that, to their knowledge and belief, the information contained within the application is true;
15. An acknowledgement that the use of public property as authorized by State Legislation shall be at the sidewalk vendor's own risk, and the sidewalk vendor uses public property at their own risk;
16. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager and shall name the City as an also named insured under that policy;
17. Any other relevant information required by the Community Planning and Building Director, or the Director's designee; and

18. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding.

F. Each application for a sidewalk vendor permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, the permittee shall also obtain a City business license to carry on the activities authorized by said permit.

12.46.040 Issuance of Permit

A. Within thirty (30) calendar days of receiving a complete application, the Community Planning and Building Director, or the Director's designee, may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he/she finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare, nor shall it violate the ADA rules, restrictions and regulations;
2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;
4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;
5. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;

6. The sidewalk vendor's application contains all required information;
7. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;
8. The sidewalk vendor has satisfied all the requirements of this chapter;
9. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
10. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
11. The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, as determined by the City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured; and
12. The sidewalk vendor has satisfactorily provided all information requested by the Community Planning and Building Director, or the Director's designee, to consider the vendor's application.

B. A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. Sidewalk vendor permits shall expire one year after issuance, unless renewed on or before the expiration date.

12.46.050 Operating Conditions

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

A. All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section and shall be in possession of a current Health and Safety permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code and California Seller's Permit.

B. The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person.

C. Only one sidewalk vendor is permitted to operate per permit.

D. The sidewalk vendor shall submit a monthly report to the Community Planning and Building Department identifying the number of hours operated.

E. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit.

F. Sidewalk vendors shall not leave their sidewalk vending receptacle unattended for any reason except for temporary use of the restroom.

G. Sidewalk vending receptacles shall not be stored on public property and shall be removed from City property when not in active use by a sidewalk vendor.

H. All sidewalk vendors shall allow a police officer, firefighter, life safety services officer, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the street vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.

I. Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of forty-eight (48) inches, a total width of thirty-two (32) inches, and a total length of forty-eight (48) inches. An exception is provided for umbrellas or other means of cover and shall be no larger than the minimum required by the Monterey County Health Department; merchandise shall not be affixed to any cover.

J. No sidewalk vending receptacle shall contain explosive or hazardous materials, other than propane necessary for heating purposes.

K. Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.

L. Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that is discharged on public property. Failure to comply will result in the City taking appropriate action to clean the discharge at the vendor's expense. The vendor permit will thereafter be suspended until such time as the expense associated with cleanup has been reimbursed to the City.

M. Sidewalk vendors shall comply with all provisions of Chapter 8.68 [Environmentally Acceptable Materials] of this Code.

N. Sidewalk vendors shall comply with the Federal Americans with Disabilities Act of 1990 and amendments thereto, and state disability rights laws.

- O. Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.
- P. Sidewalk vendors shall not use any noise making devices in association with the sale, display or offering for sale of items, such as megaphones, bells, whistles, and the like.
- Q. Sidewalk vendors shall comply with the noise standards provided in Chapter 8.56 of this Code, or any successor chapters.
- R. In parks, sidewalk vendors shall not approach persons to sell food or merchandise.
- S. All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person.
- T. Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign.
- U. The sidewalk vendor is permitted a maximum of one sign not exceeding three (3) square feet in area; and no free-standing sign shall be placed on a public street or sidewalk.

12.46.060 Prohibited Locations

- A. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:
1. Carmel Beach and the adjacent Scenic Pathway.
 2. Mission Trail Nature Preserve.
 3. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, intra-block walkway, beach, square, street, street end, or parking lot.
 4. Within one hundred (100) feet for the Police and Fire Departments.
 5. Within fifty (50) feet of:
 - a. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.
 - b. An area designated for a special event permit issued by the City, during the limited duration of the special event, if the City provides the sidewalk vendor any notice, business interruption mitigation, or other rights the City provided to any affected businesses or property owners under the City's special event permit.

- c. The Del Mar Parking Lot including the adjacent sidewalks and restroom area.
 6. Within twenty-five (25) feet of:
 - a. The monuments located within Devendorf Park.
 - b. Another sidewalk vendor.
 - c. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.
 7. Within five (5) feet of any:
 - a. Business entrance and/or display window.
 - b. Fire hydrant.
 - c. Intersection of a street and a sidewalk.
 - d. Curb which has been designated as white, yellow, blue, or red zone, or a bus zone.
 - e. Driveway, alley, or entrance to a parking lot or parking garage.
 - f. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.
 8. Sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities on any portion of a commercial district sidewalk that has a width of less than ten (10) feet.
 9. A sidewalk vendor may pass through narrower portions of commercial district sidewalk in order to reach their destination, but shall not conduct business on any portion of sidewalk that is less than ten (10) feet in width.
 10. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- B. Stationary sidewalk vendors shall not operate in the residential zoning districts.
- C. Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

12.46.070 Prohibited Activities

- A. Sidewalk vendors shall not engage in any of the following activities:
1. Renting merchandise to customers.
 2. Providing a service that is neither defined a merchandise or food.
 3. Displaying or advertising merchandise or food that is not available for immediate sale.
 4. Selling of alcohol, cannabis, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or cannabis.
 5. Using an open flame or charcoal-fueled device on or within any sidewalk vending receptacle.
 6. Using an electrical outlet or power source, or water sources, that is owned by the City or another person other than the sidewalk vendor.
 7. Harassing customers as defined in Section 12.46.020 of this Code.
 8. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale.
 9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase.
 10. Touching the person(s) being offered food or merchandise without that person(s)' consent.
 11. Placing their sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities.
 12. Conducting the retail sales of souvenirs, in accordance with Section 17.14.040.T.13 of this Code.
 13. Operating as a formula food establishment, as defined in Section 17.70.020 of this Code.
- B. Sidewalk vending is permitted during the following times:
1. Within the commercial districts, including any parks contained within these districts, between the hours of 8:00 a.m. and 9:00 p.m. daily.

2. Within residential districts, including any parks contained within these districts, between the hours of 9:00 a.m. and 6:00 p.m. daily.

12.46.080 Penalties

A. As prescribed by State Legislation, violations of this chapter may not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation and revocation structure.

B. Except as otherwise provided in this chapter, any violation of this chapter shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

C. If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid sidewalk vendor permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

D. Upon proof of a valid sidewalk vendor permit issued by the City, the administrative fines set forth in Subsection 12.46.080.C shall be reduced to the administrative fines set forth in Subsection 12.46.080.B.

E. The Community Planning and Building Director, or the Director's designee, may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

12.46.090 Appeals

A. All appeals of administrative citations shall be conducted in accordance with Section 18.04.150 of this Code.

B. Decisions of the Community Planning and Building Director, or the Director's designee, to revoke a permit shall be appealed in the following manner:

1. Request for an appeal hearing shall be processed in accordance with Section 18.04.090 of this Code, or any successor section.
2. Decisions that are appealed shall not become effective until the appeal is resolved.
3. Appeals of decisions shall be made in writing on forms provided by the City.
4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 18.04.110 of this Code.
5. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final.

Chapter 12.46 SIDEWALK VENDING PROGRAM

Sections:

12.46.010 Purpose and Findings

12.46.020 Definitions

12.46.030 Permit Required

12.46.040 Issuance of Permit

12.46.050 Operating Conditions

12.46.060 Prohibited Locations

12.46.070 Prohibited Activities

12.46.080 Penalties

12.46.090 Appeals

12.46.010 Purpose and Findings.

A. Purpose. The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Senate Bill 946 (Chapter 459, Statutes 2018). The provisions of this chapter bring the City into compliance with Senate Bill 946 by removing total prohibitions on sidewalk vending activities while still permitting regulation and enforcement of such activities. Sections 53036-53039 of the California Government Code confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The requirements set forth in this chapter are intended to protect the public's health, safety, and welfare by ensuring that vendors on public property provide safe and sanitary conditions for consumers and the general public, are adequately insured, are properly licensed with other agencies, and that the total number of allowed vending permits in the commercial and residential districts is limited. This chapter is adopted pursuant to the City's police powers for the purpose of regulating vending on public property.

B. Findings. The City Council hereby finds that limitations on sidewalk vending are necessary to:

1. Comply with State Legislation;
2. Promote the health, safety and welfare;
3. Ensure that the Goals and Policies of the City's General Plan are upheld;
4. Ensure that the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained;

5. Provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services
6. Protect the quality of life of City residents and minimize disruptions to the quiet enjoyment of residential property by restricting noise- making devices associated with sidewalk vending;
7. Ensure no interference to the performance of police, firefighter, and emergency other medical personnel services;
8. Maximize public access in the commercial districts and along the coast; and
9. Reduce exposure to the City for personal injury or property damage claims and litigation.

C. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:

1. The majority of the sidewalks and pathways in the City are under ten (10) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities in compliance with the American with Disabilities Act (ADA);
2. The City's Commercial District and associated sidewalk areas are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes in which most of the segments of sidewalk are under ten (10) feet in width. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the popularity of these tourist destinations and the narrow sidewalks;
3. The majority of the City's Residential District does not contain City-recognized sidewalks and pedestrian access is limited to the roadway. A limit on the number of sidewalk vending permits issued by the City is necessary to protect the public from injury given the lack of recognized sidewalks;
4. Devendorf Park is .60 acres in size and offers passive types of uses such as picnic. A limit on the number of sidewalk vending permits for Devendorf Park is necessary to promote public health, safety and welfare, and to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.
5. The Police Department and Fire Department contain critical infrastructure and restrictions around these facilities are necessary to ensuring health, safety and welfare of the public;

6. Carmel Beach is a coastal and scenic resource and restrictions of sidewalk vending on and around the beach are necessary to protect this resource;
7. The Scenic Pathway is a narrow dirt path located adjacent to Carmel Beach and is a popular tourist destination with high pedestrian traffic volumes. Restrictions on sidewalk vending along the path are necessary to protect the public from injury given the popularity of these tourist destinations and the multiple litigation experiences of the City pertaining to this area; and
8. Mission Trail Nature Preserve is natural resource designated as an environmentally sensitive habitat area. Restrictions of sidewalk vending at this location are necessary to preserve this natural resource.

12.46.020 Definitions

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in this Code, the California Business and Professions Code, California Vehicle Code, or California Government Code.

- A. "Beach" means any public oceanfront, or bay front beach within the City.
- B. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, or any successor chapter.
- C. "City" means the City of Carmel-by-the-Sea.
- D. "Code" mean the City of Carmel-by-the-Sea Municipal Code.
- E. "Commercial District" means any area zoned exclusively as commercial in Title 17 of the Municipal Code.
- F. "Devendorf Park" means the park space located at the northwest corner of Junipero and Ocean Avenues, excluding the sidewalks around the park grounds.
- G. "Food" means any item provided in Health and Safety Code Section 113781, or any successor section.
- H. "Harassment" mean any form of unauthorized or unpermitted touching, verbal abuse, blockage of pathways or interference with pedestrian traffic.
- I. "Human Powered Device" shall mean any device moved by human power, including, but not limited to, a pushcart, wagon, bicycle, tricycle, pedal-driver cart,

other non-motorized conveyance, or other wheeled container or mechanism, or from one's person.

- J. "Merchandise" means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise.
- K. "Owner" shall mean any person or entity owning, or otherwise controlling the operation of any business or activity involving Vending on Public Property.
- L. "Park" means public parkland located within City limits including Devendorf Park, Piccadilly Park, First Murphy Park, Forest Hill Park and Vista Lobos Park.
- M. "Public Property" shall mean any real property, public easement, public street, street median, alley, parkway, public sidewalk, or other interest therein owned, held, leased, operated or otherwise controlled by the City.
- N. "Residential District" means any area zoned exclusively as residential in Title 17 of the Municipal Code.
- O. "Roaming Sidewalk Vendor" shall mean a Sidewalk Vendor who moves from place to place and stops only to complete a transaction.
- P. "Service Business" means a commercial enterprise that provides work performed by an individual or team for the benefit of its customers.
- Q. "Scenic Pathway" means the dirt pathway located westerly and parallel to Scenic Road and adjacent to the beach.
- R. "Sidewalk" means that portion other than the roadway, set apart by curbs, barriers, markings or other delineation specifically.
- S. "Sidewalk Vendor" shall mean a person who vends goods or merchandise upon a public sidewalk, including, but not limited to vending from a structure, stand, display, showcase, rack, human powered device or other means.
- T. "Sidewalk vending receptacle" or "sidewalk vendor receptacle" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance used for sidewalk vending activities.
- U. "Special Event" shall mean a City permitted event including, but not limited to, festivals, art shows, and/or cultural events.
- V. "Stationary Sidewalk Vendor" shall mean a sidewalk vendor who vends from a fixed location.
- W. "Vend" or "Vending" shall mean any act of hawking, operating noisemaking devices to attract attention to the vendor, or the displaying, selling, or offering for sale of

any displayed goods or merchandise to the public from any carrying device, box, bag, stand, human powered device, or from a vehicle.

12.46.030 Permit Required

A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Community Planning and Building Director, or the Director's designee, under this chapter. The permit fee shall be established by resolution of the City Council.

B. No more than ten (10) permits shall be issued by the City that allow sidewalk vending in the commercial or residential districts, including all city-owned parks other than Devendorf Park, in order to protect the public health, safety, and welfare. No more than one commercial/residential permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

C. No more than three (3) permits shall be issued by the City that allow sidewalk vending in Devendorf Park in order to prevent undue concentrations of commercial activity and protect the character of the park. No more than one Devendorf Park permit shall be issued to an individual sidewalk vendor and only one vending receptacle is permitted per permit.

D. Sidewalk vendor permits shall be issued in the order that they are received and deemed complete.

E. A written application for a sidewalk vendor permit shall be filed with the Community Planning and Building Director, or the Director's designee, on a form provided by the City, and at a minimum, shall contain the following information:

1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;
4. The location(s) in the City where the sidewalk vendor intends to operate;
5. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
6. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;

7. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
8. Whether the sidewalk vendor will be selling food, merchandise, or both;
9. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
10. If the vendor is selling merchandise, a description of the merchandise to be sold;
11. Proof of a valid Health permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code, if Vending food;
12. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sub-location, which shall be maintained for the duration of the sidewalk vendor's permit;
13. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, state, and federal laws;
14. A certification that, to their knowledge and belief, the information contained within the application is true;
15. An acknowledgement that the use of public property as authorized by State Legislation shall be at the sidewalk vendor's own risk, and the sidewalk vendor uses public property at their own risk;
16. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager and shall name the City as an also named insured under that policy;
17. Any other relevant information required by the Community Planning and Building Director, or the Director's designee; and
18. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or

indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding.

F. Each application for a sidewalk vendor permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, the permittee shall also obtain a City business license to carry on the activities authorized by said permit.

12.46.040 Issuance of Permit

A. Within thirty (30) calendar days of receiving a complete application, the Community Planning and Building Director, or the Director's designee, may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he/she finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare, nor shall it violate the ADA rules, restrictions and regulations;
2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;
3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;
4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;
5. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;
6. The sidewalk vendor's application contains all required information;
7. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;

8. The sidewalk vendor has satisfied all the requirements of this chapter;
9. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
10. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
11. The sidewalk vendor has adequate insurance to protect the City from liability associated with the sidewalk vendor's activities, as determined by the City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured; and
12. The sidewalk vendor has satisfactorily provided all information requested by the Community Planning and Building Director, or the Director's designee, to consider the vendor's application.

B. A sidewalk vendor permit is non-transferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. Sidewalk vendor permits shall expire one year after issuance, unless renewed on or before the expiration date.

12.46.050 Operating Conditions

All sidewalk vendors are subject to the following operating conditions when conducting sidewalk vending activities:

A. All food and merchandise shall be stored either inside or affixed to the sidewalk vendor receptacle or carried by the sidewalk vendor. Food and merchandise shall not be stored, placed, or kept on any public property. If affixed to the sidewalk vendor receptacle, the overall space taken up by the sidewalk vendor receptacle shall not exceed the size requirements provided in this section and shall be in possession of a current Health and Safety permit issued by the Monterey County Health Department in accordance with Part 7 of the California Health and Safety Code and California Seller's Permit.

B. The sidewalk vendor permit shall be displayed conspicuously at all times on the sidewalk vending receptacle or the sidewalk vendor's person.

C. Only one sidewalk vendor is permitted to operate per permit.

- D. The sidewalk vendor shall submit a monthly report to the Community Planning and Building Department identifying the number of hours operated.
- E. Sidewalk vendors shall ensure that all required insurance is in effect prior to conducting any sidewalk vendor activities and maintained for the duration of the permit.
- F. Sidewalk vendors shall not leave their sidewalk vending receptacle unattended for any reason except for temporary use of the restroom.
- G. Sidewalk vending receptacles shall not be stored on public property and shall be removed from City property when not in active use by a sidewalk vendor.
- H. All sidewalk vendors shall allow a police officer, firefighter, life safety services officer, code enforcement officer, health inspector, or other government official charged with enforcing laws related to the street vendor's activities, at any time, to inspect their sidewalk vending receptacle for compliance with the size requirements of this chapter and to ensure the safe operation of any heating elements used to prepare food.
- I. Sidewalk vending receptacles and any attachments thereto shall not exceed a total height of forty-eight (48) inches, a total width of thirty-two (32) inches, and a total length of forty-eight (48) inches. An exception is provided for umbrellas or other means of cover and shall be no larger than the minimum required by the Monterey County Health Department; merchandise shall not be affixed to any cover.
- J. No sidewalk vending receptacle shall contain explosive or hazardous materials, other than propane necessary for heating purposes.
- K. Sidewalk vendors that sell food shall maintain a trash container in or on their sidewalk vending receptacle and shall not empty their trash into public trashcans. The size of the vendor's trash container shall be taken into account when assessing the total size limit of a sidewalk vending receptacle. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.
- L. Sidewalk vendors shall immediately clean up any food, grease or other fluid or item related to sidewalk vending activities that is discharged on public property. Failure to comply will result in the City taking appropriate action to clean the discharge at the vendor's expense. The vendor permit will thereafter be suspended until such time as the expense associated with cleanup has been reimbursed to the City.
- M. Sidewalk vendors shall comply with all provisions of Chapter 8.68 [Environmentally Acceptable Materials] of this Code.
- N. Sidewalk vendors shall comply with the Federal Americans with Disabilities Act of 1990 and amendments thereto, and state disability rights laws.
- O. Sidewalk vendors shall maintain a minimum four (4) foot clear accessible path free from obstructions, including sidewalk vending receptacles and customer queuing area.

P. Sidewalk vendors shall not use any noise making devices in association with the sale, display or offering for sale of items, such as megaphones, bells, whistles, and the like.

Q. Sidewalk vendors shall comply with the noise standards provided in Chapter 8.56 of this Code, or any successor chapters.

R. In parks, sidewalk vendors shall not approach persons to sell food or merchandise.

S. All signage and advertising related in any way to the sidewalk vendor shall be attached to the sidewalk vending receptacle, if any, or the sidewalk vendor's person.

T. Sidewalk vendors shall not use any electrical, flashing, wind powered, or animated sign.

U. The sidewalk vendor is permitted a maximum of one sign not exceeding three (3) square feet in area; and no free-standing sign shall be placed on a public street or sidewalk.

12.46.060 Prohibited Locations

A. Sidewalk vendors shall not engage in sidewalk vending activities at the following locations:

1. Carmel Beach and the adjacent Scenic Pathway.
2. Mission Trail Nature Preserve.
3. Any public property that does not meet the definition of a sidewalk or pathway including, but not limited to, any alley, intra-block walkway, beach, square, street, street end, or parking lot.
4. Within one hundred (100) feet for the Police and Fire Departments.
5. Within fifty (50) feet of:
 - a. A permitted certified farmers' market or swap meet during the limited operating hours of that certified farmers' market or swap meet.
 - b. An area designated for a special event permit issued by the City, during the limited duration of the special event, if the City provides the sidewalk vendor any notice, business interruption mitigation, or other rights the City provided to any affected businesses or property owners under the City's special event permit.
 - c. The Del Mar Parking Lot including the adjacent sidewalks and restroom area.

6. Within twenty-five (25) feet of:
 - a. The monuments located within Devendorf Park.
 - b. Another sidewalk vendor.
 - c. Any police officer, firefighter, lifeguard or emergency medical personnel who are actively performing their duties or providing services to the public.
 7. Within five (5) feet of any:
 - a. Business entrance and/or display window.
 - b. Fire hydrant.
 - c. Intersection of a street and a sidewalk.
 - d. Curb which has been designated as white, yellow, blue, or red zone, or a bus zone.
 - e. Driveway, alley, or entrance to a parking lot or parking garage.
 - f. Trash receptacle, bike rack, bench, bus stop, restroom, or similar public use items.
 8. Sidewalk vendors shall not sell food or merchandise or engage in any sidewalk vending activities on any portion of a commercial district sidewalk that has a width of less than ten (10) feet.
 9. A sidewalk vendor may pass through narrower portions of commercial district sidewalk in order to reach their destination, but shall not conduct business on any portion of sidewalk that is less than ten (10) feet in width.
 10. At any park where the City has signed an agreement for concessions that exclusively permits the sale of food or merchandise by a concessionaire.
- B. Stationary sidewalk vendors shall not operate in the residential zoning districts.
- C. Sidewalk vending receptacles shall not touch, lean against or be affixed at any time to any building or structure including, but not limited to lampposts, fire hydrants, benches, bus shelters, newsstands, trashcans or traffic barriers.

12.46.070 Prohibited Activities

A. Sidewalk vendors shall not engage in any of the following activities:

1. Renting merchandise to customers.
2. Providing a service that is neither defined a merchandise or food.
3. Displaying or advertising merchandise or food that is not available for immediate sale.
4. Selling of alcohol, cannabis, adult oriented material, tobacco products, products that contain nicotine or any product used to smoke/vape nicotine or cannabis.
5. Using an open flame or charcoal-fueled device on or within any sidewalk vending receptacle.
6. Using an electrical outlet or power source, or water sources, that is owned by the City or another person other than the sidewalk vendor.
7. Harassing customers as defined in Section 12.46.020 of this Code.
8. Knowingly making false statements or misrepresentations during the course of offering food or merchandise for sale.
9. Blocking or impeding the path of the person(s) being offered food or merchandise to purchase.
10. Touching the person(s) being offered food or merchandise without that person(s)' consent.
11. Placing their sidewalk vending receptacles outside of any pathway or sidewalk when engaging in sidewalk vending activities.
12. Conducting the retail sales of souvenirs, in accordance with Section 17.14.040.T.13 of this Code.
13. Operating as a formula food establishment, as defined in Section 17.70.020 of this Code.

B. Sidewalk vending is permitted during the following times:

1. Within the commercial districts, including any parks contained within these districts, between the hours of 8:00 a.m. and 9:00 p.m. daily.
2. Within residential districts, including any parks contained within these districts, between the hours of 9:00 a.m. and 6:00 p.m. daily.

12.46.080 Penalties

A. As prescribed by State Legislation, violations of this chapter may not be prosecuted as infractions or misdemeanors and shall only be punished by the following administrative citation and revocation structure.

B. Except as otherwise provided in this chapter, any violation of this chapter shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
2. An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.

C. If a sidewalk vendor violates any portion of this chapter and cannot present the citing officer with a proof of a valid sidewalk vendor permit, the sidewalk vendor shall be assessed administrative fines in the following amounts:

1. An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
2. An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of the first violation.

D. Upon proof of a valid sidewalk vendor permit issued by the City, the administrative fines set forth in Subsection 12.46.080.C shall be reduced to the administrative fines set forth in Subsection 12.46.080.B.

E. The Community Planning and Building Director, or the Director's designee, may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one (1) year of the first violation.

12.46.090 Appeals

A. All appeals of administrative citations shall be conducted in accordance with Section 18.04.150 of this Code.

B. Decisions of the Community Planning and Building Director, or the Director's designee, to revoke a permit shall be appealed in the following manner:

1. Request for an appeal hearing shall be processed in accordance with Section

18.04.090 of this Code, or any successor section.

2. Decisions that are appealed shall not become effective until the appeal is resolved.
3. Appeals of decisions shall be made in writing on forms provided by the City.
4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 18.04.110 of this Code.
5. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final.



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

December 15, 2020
PUBLIC HEARINGS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Sharon Friedrichsen - Director, Contracts and Budgets

APPROVED BY: Chip Rerig, City Administrator

SUBJECT:

Resolution 2020-087 declaring results of majority protest proceedings and renewing the Carmel Hospitality Improvement District for a term of March 1, 2021 through February 28, 2031 and Resolution 2020-088 authorizing the City Administrator to execute a Professional Services Agreement with Visit Carmel to serve as the Carmel Hospitality Improvement District Owners' Association for a term of March 1, 2021 through February 28, 2031

RECOMMENDATION:

1. Adopt Resolution 2020-087 declaring results of majority protest proceedings and renewing the Carmel Hospitality Improvement District for a term of March 1, 2021 through February 28, 2031.
2. Adopt Resolution 2020-088 authorizing the City Administrator to execute a Professional Services Agreement with Visit Carmel to serve as the Carmel Hospitality Improvement District Owners' Association for a term of March 1, 2021 through February 28, 2031.

BACKGROUND/SUMMARY:

California Property and Business Improvement Law of 1994 ("1994 Law"), California Streets and Highways Code §36600 et seq. authorizes cities to establish business improvement districts for the purposes of promoting tourism. The Carmel Hospitality Improvement District (CHID) is an assessment district formed under the 1994 Law that currently assesses a rate of 1% of gross short-term room rental revenue on all lodging businesses located within the City's boundary to fund marketing and other programs to increase overnight room sales. The CHID has a 5-year term that expires on February 28, 2021.

State law allows any district that will expire to be renewed for up to ten (10) years. Accordingly, Visit Carmel has prepared a new Management District Plan ("Plan") that proposes:

1. A renewal term of 10 years effective 3/1/2021 through 2/28/2031.
2. An assessment rate set to 2% of gross short term room rental revenue, with the ability to raise the assessment rate by no more than .05% in any year up to a maximum of 3%.
3. An anticipated annual budget of \$800,000 or \$8 million over the 10 year term.
4. An initial budget of \$560,000 (70%) for marketing, public relations and sales; \$144,000 (18%) for administration, \$88,000 (11%) for contingency/reserve and \$8,000 (1%) for collections for a total budget of \$800,000.

5. A revised definition of lodging businesses to exclude vacation rentals, time-share facilities and recreational vehicle parks from the assessment.

In order for a district to be renewed, a sequence of actions must occur as outlined within California Streets and Highways Code §36600 et seq. Upon receiving a written petition signed by the property or business owners who will pay more than 50% of the total amount of assessments proposed to be levied, the City Council adopted a resolution of intention to renew the CHID on October 6, 2020. As required by Streets and Highways Code section 36623 and Government Code section 54954.6(c), the resolution of intention set a date for the public meeting on November 3, 2020 at 4:30 p.m., and the public hearing on December 8, 2020 at 4:30 p.m., and directed the city clerk to provide written notice. On November 3, 2020, Council conducted a public meeting to receive testimony regarding the renewal of the CHID and the levying of assessments, as required by Government Code section 54954.6 and the adopted resolution of intention.

The purpose of this agenda item is to hold a public hearing to receive the testimony of all interested persons for or against the renewal of the CHID, including the receipt of oral or written protests from interested business owners to be assessed under the Plan, as required under Government Code section 54954.6 and Streets and Highways Code section 36623.

The authority of the City Council to make changes to the proposed assessment or type of improvements is set forth in Streets and Highways Code Section 36624 which provides as follows:

“At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.”

At the conclusion of the public hearing, Council may:

1. Council may “adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments” in accordance with Streets and Highways Code section 36624. However, the proposed assessments may only be revised by reducing any or all of them. In addition, at the public hearing, the Council may make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities.
1. If there is no majority protest, Council may adopt the attached resolution to renew the CHID in accordance with Streets and Highways Code section 36625 with changes, if any, directed by the Council as authorized by section 36624.. However, if there are of record written or oral protests by owners of the lodging businesses within the CHID that will pay more than 50% of the estimated total assessment of the entire CHID, no further proceedings to renew the CHID shall occur for a period of one year.

If Council adopts the resolution to renew the CHID, it is also recommended that Council adopt a resolution authorizing the City Administrator to execute an agreement with Visit Carmel to continue to serve as the owners’ association for the CHID. An owners’ association is defined within Streets and Highways Code §36612 as a private nonprofit entity that is under contract with a city to administer or implement

improvements, maintenance, and activities specified in the management district plan. In accordance with Streets and Highways Code §36615, "the management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services."

FISCAL IMPACT:

In addition to the 10% transient occupancy tax collected by lodging establishments on behalf of the City, under the terms of the current CHID guests staying overnight within a lodging business within Carmel-by-the-Sea are assessed 1% of the gross room rental rate for the CHID and either \$1 or \$2 per night for the Monterey County Tourism Improvement District. Under the proposed renewal of the CHID, the assessment rate would increase to 2%, with the ability to raise the assessment rate by no more than .05% in any year up to a maximum of 3%.

The CHID assessment is collected by the City and remitted to Visit Carmel for marketing and other programs outlined within the Plan. The City will receive 1% for collections, which based upon the anticipated annual budget of \$800,000, would be \$8,000. However, in order to ensure that the City is able to recoup its costs over the 10 year term, the City will receive a minimum of \$6,500 per year, which may be adjusted annually as needed.

PRIOR CITY COUNCIL ACTION:

Council adopted Resolution 2020-068 Declaring Its Intention to Renew the Carmel Hospitality District on October 6, 2020 and held a public meeting to receive testimony on renewing the CHID and levying assessments on November 3, 2020.

ATTACHMENTS:

Attachment #1 - Resolution 2020-087-Declare Protest Results and Renew CHID

Attachment #2-Carmel_CHID Renewal_Management District Plan

Attachment #3 - Resolution 2020-088-Authorize Visit Carmel Agreement

Attachment #4 -Visit Carmel Contract with City for CHID OA

Attachment #5- Visit Carmel Agreement-Exhibit A

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

RESOLUTION NO. 2020-087

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
DECLARING THE RESULTS OF THE MAJORITY PROTEST PROCEEDINGS AND
APPROVING THE RENEWAL OF THE CARMEL HOSPITALITY IMPROVEMENT DISTRICT**

WHEREAS, the Property and Business Improvement Law of 1994, California Streets and Highways Code §36600 *et seq.* authorizes the City to establish business improvement districts upon petition by weighted majority of the lodging business owners located within the boundaries of the district;

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner within the boundaries of the Carmel Hospitality Improvement District (CHID) have petitioned the City Council to renew the CHID; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that described the proposed assessment to be levied on lodging businesses within the CHID to pay for sales promotion and marketing activities, and other improvements and activities set forth in the Plan; and

WHEREAS, the assessed lodging businesses within the CHID will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on October 6, 2020, at 4:30 PM at City Hall, eastside of Monte Verde Street between Ocean and Seventh Avenues, the City Council adopted a Resolution of Intention, Resolution 2020-068; and

WHEREAS, on November 3, 2020, at 4:30 PM at City Hall, eastside of Monte Verde Street between Ocean and Seventh Avenues, the City Council held a public meeting regarding the renewal of the CHID and City Council heard and received objections and protests, if any, to the renewal of the CHID and the levy of the proposed assessment; and

WHEREAS, on December 8, 2020, at 4:30 PM at City Hall, eastside of Monte Verde Street between Ocean and Seventh Avenues, the City Council held a public hearing regarding the renewal of the CHID and City Council heard and received objections and protests, if any, to the renewal of the CHID and the levy of the proposed assessment; and

WHEREAS, the City Clerk, at the conclusion of the public hearing, has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses in the district which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, the City bears the burden of proving by a preponderance of the evidence that an assessment imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the costs to the City in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.

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

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.
2. The assessments levied for the CHID shall be applied towards sales, promotions and marketing programs to market Carmel lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan. Assessments levied on lodging businesses pursuant to this resolution shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on room rentals is the best measure of benefit.
3. The CHID shall include all lodging business located within the boundaries of the City of Carmel-by-the-Sea. A boundary map is attached hereto and incorporated herein as Exhibit A by reference. The lodging businesses within the boundaries of the CHID, as reflected in Exhibit A, and renewed pursuant to this resolution, shall be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).
4. The activities to be provided to benefit businesses in the district will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the district; to provide activities or improvements outside the CHID; or for any purpose other than the purposes specified in the Resolution of Intention, as may be modified by the Council pursuant to this Resolution and reflected in the Plan.
5. The City Council finds as follows:
 - a) The activities funded by the assessment will provide a specific benefit to assessed businesses within the CHID that is not provided to those not paying the assessment.
 - b) The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
 - c) The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

d) Assessments imposed pursuant to the CHID are levied solely upon the assessed business, and the business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the "CHID Assessment."

6. The assessments for the entire District will total approximately \$800,000 in year one.

7. Bonds shall not be issued to fund the CHID.

8. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the CHID assessment is levied as long as they are used consistent with the requirements set forth herein.

9. The assessments to fund the activities and improvements for the CHID will be collected by the City on a bi-monthly basis, and in accordance with Streets and Highways Code §36631.

10. The Carmel Hospitality Improvement District is hereby renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031.

11. The Plan dated August 1, 2020, as Updated October 6, 2020, is hereby adopted and approved; and

BE IT FURTHER RESOLVED, that the City Council, through adoption of this Resolution and the Plan, has the right pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the CHID as defined in Streets and Highways Code §36614.5. The City Council has determined that Visit Carmel shall be the Owners' Association; and

BE IT FURTHER RESOLVED, that Visit Carmel, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the district; and

BE IT FURTHER RESOLVED, that the City Clerk, or his or her designee, is directed to take all necessary actions to complete the renewal of the CHID and to levy the assessments; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its adoption by Council.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 15th day of December, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

EXHIBIT A
District Boundaries





**CARMEL HOSPITALITY
IMPROVEMENT DISTRICT
MANAGEMENT DISTRICT PLAN**

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I. OVERVIEW

Developed by the City of Carmel-by-the-Sea, Visit Carmel, and Carmel lodging businesses, the Carmel Hospitality Improvement District (CHID) is an assessment district formed to provide targeted marketing to specifically benefit assessed businesses. This approach has been used successfully for the past five years in Carmel-by-the-Sea pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The CHID is proposed to be renewed for ten (10) years as allowed by the PBID Law and this Management District Plan (Plan) sets forth the services to be provided and budget of the CHID, assessments to be levied to fund the CHID, special benefits provided to the assessed businesses, and implementation and governance of the CHID.

Location: The CHID includes all lodging businesses within the City boundaries of the City of Carmel-by-the-Sea, as shown on the map in Section IV Boundary.

Services: The CHID is designed to provide specific benefits directly to payors through targeted marketing services designed to increase overnight tourism and associated room sales and revenue therefrom for assessed businesses, with particular concentration on increasing overnight sales during lower visitation periods.

Budget: The total CHID annual budget for the *initial* year of its ten (10)-year renewed term is anticipated to be approximately \$800,000. This budget is expected to fluctuate as occupancy rates stabilize and room rates vary.

Cost: The annual assessment rate shall be two percent (2%) of gross room rental revenue on short term stays (less than 31 days), with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any one year up to a maximum of three percent (3%), as specified in Section VII. Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

Collection: The City will be responsible for collecting the assessment on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the CHID.

Duration: The CHID will be renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031. Once per year, beginning on March 1, 2022, there is a 30-day period in which owners of assessed businesses paying more than fifty percent (50%) of the assessment may protest and initiate a City Council hearing on CHID termination.

Management: Visit Carmel will continue to serve as the CHID's Owners' Association and must provide annual reports to the City Council. The Visit Carmel Board of Directors, comprised of a minimum of six (6) business owners or their representatives paying the CHID assessment, will be responsible for managing funds and implementing programs in accordance with this Plan.

II. BACKGROUND

Property and Business Improvement Districts (PBIDs) utilize the efficiencies of private sector operation in the market-based promotion of business districts. PBIDs allow business owners to organize their efforts to increase sales and promotional efforts. Business owners within the district fund a PBID, and those funds are used to provide services that the businesses desire and benefit the businesses within the district.

Property and Business Improvement District services may include, but are not limited to:

- Marketing of the District
- Business Promotion Activities
- Infrastructure Improvements

In California, PBIDs are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The PBID Law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. *The key difference between PBIDs and other special benefit assessment districts is that funds raised are managed by the private non-profit corporation governing the district.*

There are many benefits to Business Improvement Districts:

- Funds cannot be diverted for other government programs;
- Services are customized to fit the needs of each district;
- They allow for a wide range of services, including those listed above;
- Property and Business Improvement Districts are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable funding source for business promotion.

The PBID Law is provided in Appendix 1 of this document.

III. EXISTING CHID AND RENEWAL

The existing CHID was implemented on March 1, 2016 with a five (5) year term and expires on February 28, 2021. It provides for a 1% assessment rate on gross room rental revenue per overnight stay. This Plan renewal proposes a 2% assessment rate, with the ability to increase the assessment rate to 3%, for a ten (10)-year term expiring February 28, 2031.

There are several specific reasons why the CHID renewal is crucial at this time:

A. The Need to Increase Occupancy

Occupancy rates for Carmel-by-the-Sea hotels during the March/April 2020 bi-monthly period were reported at 15%, as compared to 65% during the same period of 2019. The May-June 2020 reporting period is likely to show similarly dismal numbers as all leisure travel was essentially closed during May and half of June.

The catastrophic impact the Covid-19 pandemic has had on decreased tourism in Carmel-by-the-Sea, the state of California, and throughout the country¹, as well as the predicted slow recovery rate of both the economy and individual mindsets toward travel², supports the strong need to secure a stable, self-generating marketing fund that will be vital for Carmel-by-the-Sea to compete for visitation.

Even as leisure travel has opened, the regular visitation patterns of year's past will continue to be severely disrupted. While there are indications of pent up desire for travel, the situation continues to be tenuous. The virus continues to spread, outbreaks are likely, shutdowns may occur and reoccur, and the economy is unstable. In addition, the lack of any international visitation for the indefinite future will negatively impact the mid-week and off-season months.

Visit Carmel's marketing programs must be thoughtful and strategic. With the goal of supporting the lodging businesses but not at the expense of the health of the destination and the community.

B. An Opportunity to Increase City Tax Revenue

As with many communities around the country, the pandemic has decimated the City's budget, due to the plunge in hotel, restaurant, and retail sales. But with Carmel's interdependence on tourism as its main economic driver, the Village is more severely impacted than a typical small city. Indeed, the City's projected 2020-21 budget indicates projected revenue of about \$18.6 million, a 33% decrease from the previous year.

With the assessment funds generated and the focus on marketing to increase overnight visitation, so too will the City's TOT and sales tax revenue benefit.

¹Total travel spending in the U.S. is predicted to drop 45% by the end of this year. International inbound spending is expected to fall 75%. FULL FORECAST: https://www.ustravel.org/system/files/media_root/document/Research_Travel-Forecast_Summary-Table.pdf

²Since the beginning of March, the COVID-19 pandemic has resulted in nearly \$237 billion in losses for the U.S. travel economy. Tourism spending in California is expected to drop to \$75.4 billion in 2020, about half of the 2019 total, erasing a decade of growth. RECAP: https://www.ustravel.org/sites/default/files/media_root/document/Coronavirus_WeeklyImpacts_06.18.20.pdf and <https://industry.visitcalifornia.com/marketing-communications/coronavirus>

C. Stable Funding for Hospitality and Tourism Promotion

The renewal of the CHID will continue to provide a stable source of funding for consistent hospitality and tourism promotion efforts, free of the political and economic circumstances that can complicate funding for promotion of the hospitality and tourism industry.

D. The Need to Educate the Visitor on Responsible Travel

We are only in the initial stages of allowing leisure travel back to Carmel-by-the-Sea, post-Covid. However, it already has become clear that the way to travel safely and responsibly will be different than ever before. Increased demands on both the visitors and the hospitality community will require vigilance, creativity, flexibility, and an ongoing education on protocols. CHID funds will also be used to create and disseminate the messaging we need in order to keep our hospitality and tourism economy thriving and the health of our community safe.

E. Better Able to Compete

Finally, as Carmel-by-the-Sea begins the long road to recovery, we will be competing with destinations throughout the state—many vying for the attention of a similar demographic and geographic profile. The hospitality and tourism industry is a sophisticated, competitive industry in California with cities and counties vying for visitor business. Visit Carmel compares* to other California destination marketing organizations, also known as Tourism Improvement Districts (TID), as follows:

District	Annual TID/HID Revenue*	Assessment Rates	Other Guest Levies
Napa Valley	\$6,500,000	2%	12%
Santa Barbara South Coast	\$5,700,000	\$1-\$7/ night	11%
Sonoma County	\$4,700,000	2%	12%
Newport Beach	\$4,500,000	3%	10%
SLO County TMD	\$4,488,000	1.50%	13%
Monterey County	\$4,307,000	\$1 - \$2.50/night	10%
SLO (Unincorp)	\$3,724,000	2%	10%
South Lake Tahoe	\$2,680,000	\$3 - \$4.50/night	12%
SLO (City)	\$1,867,000	2%	12%
Pismo Beach	\$1,750,000	1%	12%
Carmel (post-COVID @2% - forecast 3-4 yrs)	\$1,300,000	2%	10%
Paso Robles	\$1,280,000	2%	12%
Laguna Beach	\$950,000	2%	12%
Morro Bay	\$835,000	3%	12%
Carmel (proposed)	\$800,000	2%	10%
Healdsburg	\$741,000	2%	14%
Sonoma City	\$730,000	2%	10%
Carmel (pre-COVID)	\$660,000	1%	10%
Truckee	\$656,400	2%	10%

Source: Civitas TID grid, with info July 2020 - <https://civitasadvisors.com/wp-content/uploads/2020/08/Global-TID-Matrix-7-22-2020.pdf>

*Note: These are revenues generated by assessment only and do not reflect full DMO revenues.

IV. BOUNDARY

The CHID will include all lodging businesses, existing and in the future, available for public occupancy within the city limits and as depicted by the boundaries shown on the map below.

Lodging business means: any building, portion of any building, or group of buildings in which there are guest rooms or suites, including housekeeping units for transient guests, where lodging with or without meals is provided. Lodging business does not include:

- Vacation time-share facilities;
- Vacation rentals, defined as a single family home, townhome, or condominium that is available for rent; and
- Recreational vehicle (RV) parks.

The boundary, as shown in the map below, currently includes 44 lodging businesses. A complete listing of the lodging businesses within the proposed CHID can be found in Appendix 2.



V. SERVICES

Assessment funds will be spent on specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost of conferring the benefits or granting the privileges. The privileges and services provided with the CHID funds are activities and improvements, available only to assessed businesses, designed to increase overnight stays and revenue therefrom.

A. Integrated Marketing Program

An integrated strategic marketing program will promote assessed lodging businesses. The marketing program will account for approximately 70% of the budget and have a central theme of promoting Carmel-by-the-Sea as a desirable place for visitors. However, the program will have the over-arching goal of increasing guests and sales at assessed businesses and may include the following activities:

- Internet marketing efforts, including the use of social media, to increase awareness and optimize internet presence to drive customers and sales to assessed businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive customers and sales to assessed businesses;
- Public relations campaigns to increase awareness and brand image using earned media coverage, including familiarization tours for media and influencers and expenses incurred therein;
- Attendance at media events and/or trade shows to promote assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance at professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract customers to assessed businesses;
- Development and maintenance of a website designed to promote assessed businesses; and
- Outside agency or independent contractor fees for providing marketing services.

B. Administration

The administration portion of the budget will account for approximately 18% of the budget and utilized for administrative staffing costs, office costs, advocacy and other general administrative costs such as insurance, legal, and accounting fees.

C. Contingency/Reserve

A prudent portion of the budget, approximately 11%, will be allocated to a contingency fund, to account for lower than anticipated collections or a predicted need for cash flow stabilization. Contingency funds may be held in a reserve fund or utilized for other programs or services authorized by the PBID Law, administration or renewal costs at the discretion of the Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the Board. The reserve fund may be used for the costs of renewing the CHID.

D. City Collection Fee

The City shall retain a fee equal to one percent (1%) of the amount of assessment collected, and not to be less than \$6,500 collected during each one-year period, to cover its costs of collection and administration. The minimum fee amount will be evaluated annually and adjusted as needed to ensure city's administrative costs remain covered.

VI. BUDGET

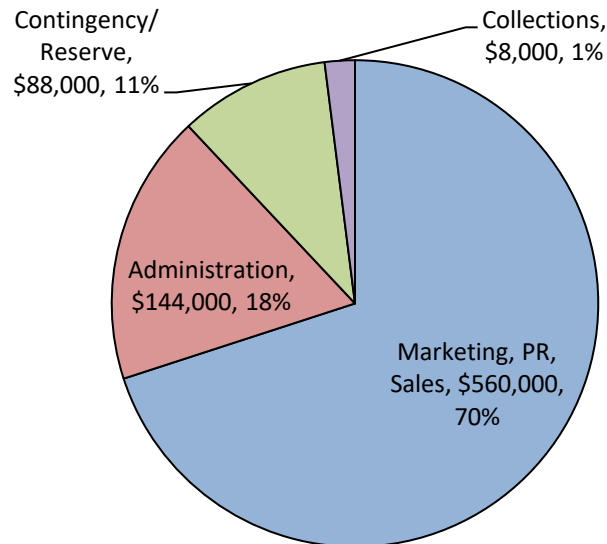
A. Annual Budget

The total ten (10) year budget, based on the two percent (2%) rate of assessment, is projected at approximately \$800,000 for the initial year, or \$8,000,000 total through February 28, 2031. This budget is expected to fluctuate as businesses open and close and room occupancy and rates change, but is not expected to significantly change over the life of the CHID. Should the assessment rate be increased to three percent (3%) as provided by Section VII below, the annual budget could be increased up to approximately \$1,200,000, subject to the fluctuations noted.

B. Budget Allocations

The budget allocations for the initial year are shown below. Although actual annual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain consistent. However, the Visit Carmel Board of Directors shall have the authority to adjust categorical allocations by up to fifteen percent (15%) of the total budget each year. In the event of a legal challenge against the CHID, any and all assessment funds may be used for the costs of defending the CHID, the City, and Visit Carmel related to the CHID.

The initial annual budget of \$800,000 will be allocated as follows:



C. GAAP Compliance

Each budget category includes all costs related to providing that activity or improvement, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the Marketing, Public Relations, Sales & Promotion budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of employing an individual staff member may be allocated to multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the activities and improvements below will be determined by the CHID Management Committee on an as-needed basis and detailed (number of employees and cost of salaries and benefits) in the annual report to the City.

VII. ASSESSMENT

A. Assessment

The annual assessment rate is two percent (2%) of gross room rental revenue on short term stays (less than 31 days). Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

The term “gross room rental revenue” as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

During the ten (10) year term, the assessment rate may be increased by the CHID/Visit Carmel Board to a maximum of three percent (3%) of gross lodging revenue. The maximum assessment increase in any year shall be one-half of one percent (0.50%) of gross room rental revenue. In any case, the annual assessment cannot exceed the actual costs to operate the District in any given year.

The assessment is levied upon and is a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall be disclosed as the “CHID Assessment.” The assessment is imposed solely upon and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds shall not be issued.

B. Penalties and Interest

The City shall be responsible for collection of delinquent assessments. The City of Carmel-by-the-Sea shall retain any penalties or interest collected with unpaid assessments as its fee for collecting the delinquent assessments. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any assessed business which fails to remit payment of assessments within fourteen (14) days of the due date shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* If an assessed business fails to remit any delinquent remittance within sixty (60) days following the date on which the remittance first became delinquent, it shall pay a second delinquency penalty of ten (10%) percent of the amount of the assessment in addition to the amount of the assessment and the ten (10%) percent penalty first imposed.
3. If the City determines than an assessed business is delinquent, the assessed business can be sent directly to collections without further review and the assessed business will be responsible for all late fees, interest, and collection fees.

4. *Fraud*: If it is determined that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above.
5. *Interest*: In addition to penalties imposed, any assessed business which fails to remit any assessment shall pay simple interest at the rate of six percent (6%) per year or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent until paid.
6. *Penalties Merged With Assessment*: Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid.

C. Time and Manner for Collecting Assessments

Visit Carmel shall be responsible for educating new and existing businesses in the CHID of its existence. The City shall make its best efforts to notify Visit Carmel when a business closes, opens or changes ownership within the CHID. The CHID assessment provided for under this Plan will be implemented beginning March 1, 2021 and will continue for ten (10) years through February 28, 2031. The City will be responsible for collecting the assessment on the gross room rental revenue on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each business.

The City's cost of pursuing and collecting delinquent assessments shall be paid from the penalties and interest charged on delinquent assessments or the contingency portion of the budget. If the penalties and interest do not cover the City's cost, or if any portion of penalties and interest are waived in the action to collect the delinquent assessment, the City shall be reimbursed for its costs from the contingency portion of the budget. If the City pursues delinquent Transient Occupancy Tax and delinquent CHID assessment in the same action, only the proportionate cost of collecting the assessment may be retained by the City from the assessment penalties and interest collected or charged to the contingency portion of the budget.

The City shall forward the assessments collected to Visit Carmel within 30 days from collection.

VIII. CALIFORNIA CONSTITUTIONAL COMPLIANCE

The CHID is subject to certain provisions of the California Constitution. Although it levies an assessment, the CHID is not a property-based assessment subject to the requirements of Article XIII D of the Constitution (“Proposition 218”). The Court has found, “Proposition 218 limited the term ‘assessments’ to levies on real property.”¹ Rather, the CHID assessment is a business-based assessment, and is subject to Article XIII C of the Constitution (“Proposition 26”). Pursuant to Proposition 26 all City levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the CHID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

A. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed lodging businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific lodging businesses within the CHID. The activities described in this Plan are specifically targeted to increase overnight stays for assessed lodging businesses within the boundaries of the CHID, and are and shall be narrowly tailored. CHID funds will be used exclusively to provide the specific benefit of increased overnight stays directly to the assesseees. Assessment funds shall not be used to feature non-assessed lodging businesses in CHID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by the CHID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in gross overnight stays and revenue therefrom. The specific benefit of an increase in gross overnight stays for assessed lodging businesses will be directly provided only to lodging businesses paying the CHID assessment, with sales and marketing programs promoting only those businesses paying the assessment. The CHID programs will be designed to increase gross overnight stays at each assessed lodging business. Because they are necessary to provide the CHID programs that specifically benefit the assessed lodging businesses, the administration, and contingency/reserve, and collections expenditures also provide the specific benefit of increased gross room sales to the assessed lodging businesses.

Although the CHID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific benefit to the payer.”³

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

³ Government Code § 53758(a)

B. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing services like those to be provided by the CHID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific government service to the payer.”⁶

C. Reasonable Cost

CHID activities and improvements will be implemented carefully to ensure they do not exceed the reasonable cost to the City of such activities and improvements. The full amount assessed will be used to provide the activities and improvements described herein. Funds will be managed by the Visit Carmel Board of Directors, and reports submitted on an annual basis to the City. Only assessed lodging businesses will directly benefit from other CHID-funded services. Non-assessed lodging businesses will not directly receive these, nor any other, CHID-funded services and benefits.

The CHID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room sales revenue, that portion of the promotion or program generating that gross revenue shall be paid with non-CHID funds. CHID funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room sales for non-assessed businesses.

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

IX. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the CHID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Carmel will serve as the Owners' Association for the CHID. Visit Carmel will maintain its Board of Directors, comprised of a minimum of six (6) business owners, or their representatives, paying the CHID assessment, which will be responsible for implementing this Plan. Visit Carmel shall be responsible for managing funds and implementing programs in accordance with this Plan and by direction of the Board of Directors and must provide annual reports to the City Council.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Visit Carmel Board, the Carmel Restaurant Management Committee, and certain committees wherein the CHID is discussed must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

Visit Carmel shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report may be incorporated into other City-related Annual Reports (such as the Carmel Restaurant Improvement District), may be presented at the end of the 1st quarter of the current fiscal year, and shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for the next fiscal year.
- An estimate of the cost of providing the improvements and the activities for that upcoming fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

**STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements,

maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. "Assessment"

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall

comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts

established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category

of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public

hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners

or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Adobe Inn	Forest Lodge
Best Western Town House Inn	Hofsas House
Briarwood Inn	Horizon Inn
Candlelight Inn	Hotel Carmel
Carmel Bay View Inn	Lamplighter Inn
Carmel Cottage Inn	La Playa Hotel Carmel
Carmel Country Inn	L'Auberge
Carmel Fireplace Inn	Lobos Lodge
Carmel Garden Inn	Monte Verde Inn
Carmel Green Lantern Inn	Normandy Inn
Carmel Inn & Suites	Ocean View Lodge
Carmel Lodge	Pine Inn
Carmel Oaks	Seaview Inn
Carmel Resort Inn	Svendsgaards Inn
Carmel Stonehouse Inn	Tally Ho
Carriage House	Tradewinds Inn
Casa de Carmel	The Getaway
Coachman's Inn	The Hideaway
Colonial Terrace Inn	The Homestead
Comfort Inn	Vagabonds House
Cypress Inn	Wayfarer
Edgemere Cottages	Wayside Inn

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

RESOLUTION NO. 2020-088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH VISIT CARMEL TO SERVE AS THE OWNERS' ASSOCIATION FOR THE CARMEL HOSPITALITY IMPROVEMENT DISTRICT FOR THE TERM OF MARCH 1, 2021 THROUGH FEBRUARY 28, 2031

WHEREAS, the Carmel-by-the-Sea Council renewed the Carmel Hospitality Improvement District (CHID) under California Streets and Highways Code §36630; and

WHEREAS, the CHID will have a ten year term of March 1, 2021 through February 28, 2031 and be governed by the City Council approved Management District Plan; and

WHEREAS, per Streets and Highways Code §36615, "the management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services"; and

WHEREAS, per Streets and Highways Code §36612, an "owners' association" means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan"; and

WHEREAS, the Management District Plan identifies Visit Carmel as the Owners Association; the City intends to contract with Visit Carmel as the professional service rendered by Visit Carmel as the Owners association involves a specialized knowledge or personal skill and Council approval is required for contracts of \$25,000 or more; and

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

Authorize the City Administrator to execute a Professional Services Agreement with Visit Carmel to serve as the Owners' Association for the Carmel Hospitality Improvement District for the term of March 1, 2021 to February 28, 2031.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 15th day of December 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

PROFESSIONAL SERVICES AGREEMENT
Visit Carmel

Owners' Association for the Carmel Hospitality Improvement District

THIS AGREEMENT is executed this ____ day of December, 2020, by and between the City of Carmel-by-the-Sea, a municipal corporation, (hereinafter "City"), and Visit Carmel, a nonprofit corporation, (hereinafter "Consultant"). City and Consultant are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, the Carmel-by-the-Sea Council intends to renew the Carmel Hospitality Improvement District (CHID) under California Streets and Highways Code §36630; and

WHEREAS, the CHID will be governed by the City Council approved Management District Plan and, per Streets and Highways Code §36615, "the management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services"; and

WHEREAS, the City wishes to engage Consultant to continue to serve as the owners' association and perform the services required by State law and this Agreement; and

WHEREAS, Consultant is willing to render such professional services ("Services"), as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

- A. **Scope of Services**. Consultant agrees to provide to the City the following services ("Scope of Services" or "Services") pursuant to the terms and conditions set forth in this Agreement:
 - i. Serve as the owners' association for the CHID; manage CHID assessment funds and implement programs in accordance with the adopted Management District Plan, as set forth within Exhibit "A" attached hereto and incorporated herein by this reference.
 - ii. Perform responsibilities as required under the State Property and Business Improvement District Law of 1994 including, but not limited to, the following:
 - a. Deliver the annual report to the City in the month of April, as required by the State Property and Business Improvement District Law of 1994. The annual report may be combined with other annual reports submitted by Visit Carmel to the City as part of an all-inclusive report so long as the requirements contained within Streets and Highways Code Section 36650 are met.
 - b. Comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the CHID are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the CHID.
 - iii. Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly

PROFESSIONAL SERVICES AGREEMENT
Visit Carmel

Attachment 4

Owners' Association for the Carmel Hospitality Improvement District

specified in this Agreement, necessary to perform the Services required of Consultant under this Agreement.

- iv. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of Services under this Agreement is the Visit Carmel Executive Director.
- v. Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

B. Familiarity with Services and Site.

By executing this Agreement, Consultant represents that Consultant:

- a. has thoroughly investigated and considered the Scope of Services to be performed;
- b. has carefully considered how the Services should be performed;
- c. understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement; and
- d. possesses all licenses required under local, state or federal law to perform the Services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.

If Services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its Services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of Services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

2. COMPENSATION

- A. **Total Fee.** Compensation is entirely funded by CHID assessments. City shall collect assessments on a bi-monthly basis, or every two (2) months, and remit assessments, less the City collection fee and any proportional costs of enforcement fees associated with the collection of delinquent assessments, to Consultant within thirty (30) days after the close of the reporting period. The City collection fee shall be calculated at one percent (1%) of the total assessment collected during each bi-monthly reporting period, but shall be no less than Six Thousand Five Hundred dollars (\$6,500.00) per fiscal year. The City collection fee may be reviewed annually and adjusted based upon mutual concurrence by City and Consultant.

**PROFESSIONAL SERVICES AGREEMENT
Visit Carmel**

Owners' Association for the Carmel Hospitality Improvement District

B. Audit and Examination of Accounts:

- i. Consultant must keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to Services to be performed under this Agreement.
- ii. Any audit conducted of books of records and accounts must be kept in accordance with generally accepted professional standards and guidelines for auditing.
- iii. Consultant must disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.
- iv. Consultant must include the requirements of Section 2B, "Audit and Examination of Accounts", in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of the Services. All records, which pertain to actual disputes, litigation, appeals or claims, must be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

3. AGREEMENT TERM

- A. **Term.** The work under this Agreement will commence on March 1, 2021 and shall expire on February 28, 2031, unless earlier terminated pursuant to this Agreement, or upon termination of the CHID if sooner.
- B. **Timely Work.** Consultant shall perform all duties incidental or necessary in executing the Management District Plan and providing annual reports to City Council in a timely manner and shall be performed diligently, competently and in accordance with professional standards of performance. Failure to perform is deemed a material breach of this Agreement and the City may terminate this Agreement with no further liability hereunder, except that City shall remit all CHID assessment fees due to Consultant up to the date of termination.

4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Substitution of Employees or Subconsultants:** If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant's employees or subconsultants, then Consultant may, upon written request from the City, replace such employee or subconsultant. Consultant must, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience. Whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City will not be liable to pay additional compensation to Consultant for any replacement or substitution.
- B. **Sub-agreements with Subconsultants.** Consultant will incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of

Owners' Association for the Carmel Hospitality Improvement District

the Services necessary to preserve all rights of the City under this Agreement. Consultant is fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.

- C. **Not an Agent of the City.** Nothing in this Agreement will be interpreted to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.
- D. **Independent Contractor:** Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City may not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. Consultant is solely liable for the work quality and conditions of any partners, employees and subconsultants.

No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant may not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant will be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. Consultant will defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

5. REPRESENTATIVES AND COMMUNICATIONS

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its Project Representative upon notice to Consultant.

Name: Chip Rerig
 Title: City Administrator
 Address: City of Carmel-by-the-Sea
P.O. Box CC, Carmel-by-the-Sea, CA 93921
 Telephone: 831.620.2058
 Email: crerig@ci.carmel.ca.us

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager"). Consultant may unilaterally change its Project Manager upon notice to City.

Name: Amy Herzog
 Title: Executive Director
 Address: Visit Carmel
P.O. Box 3921, Carmel-by-the-Sea, CA 93921
 Telephone: 831.238.1849

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Owners' Association for the Carmel Hospitality Improvement District

Email: amy.herzog@carmelcalifornia.com

- C. **Meet and Confer.** Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as may be required by the City to insure timely and adequate performance of this Agreement.
- D. **Communications and Notices.** All communications between the City and Consultant regarding this Agreement, including performance of Services, will be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either Party may be required or may wish to give to the other must be in writing and will be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

Consultant further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Consultant's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Consultant or any of Consultant's employees, agents, subconsultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence or willful misconduct of the City or any of its Indemnitees.

In no event will the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782, 2782.6, and 2782.8.

7. INSURANCE

Consultant must submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant must maintain in effect

PROFESSIONAL SERVICES AGREEMENT

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Owners' Association for the Carmel Hospitality Improvement District

throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Directors and Officers Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three (3) years following the City's acceptance of the work.
- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either admitted to do business in California with a current A.M. Best rating of no less than A:VI; **or** an insurance company with a current A.M. Best rating of no less than A:VII. An exception may be made for the State Compensation Insurance Fund when not specifically rated.
 - ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.
 - iii. The general liability and auto policies must:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea is excess to the Consultant's insurance and will not contribute with it.
 - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
 - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
 - iv. Prior to the start of work under this Agreement, Consultant will file certificates of insurance and endorsements evidencing the coverage required by this Agreement

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with the City. Consultant will file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, may in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which will continue in full force and effect. All coverage available to the Consultant as named insured will also be available and applicable to the additional insured. Notwithstanding these insurance requirements, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies must be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured will reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event will any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.
- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, upon thirty (30) days' notice to Consultant.
- viii. Consultant shall require and verify that all sub consultants and subcontractors maintain insurance meeting all the requirements stated herein, with the exception of 7(B) Directors and Officers Insurance coverage. Instead sub consultants shall be required to carry Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Subconsultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the Consultant's acceptance of the work. Sub consultants will name both Visit Carmel and the City of Carmel-by-the-Sea as additional insured on the policy.
- ix. If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
- x. The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those

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limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

- xi. Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.

8. ASSURED PERFORMANCE

- A. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.
- B. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- C. If at any time the City has a reasonable and objective basis to believe Consultant may not be adequately performing its obligations under this Agreement or that Consultant may fail to complete the Services required under this Agreement, City may request from Consultant prompt written assurance of performance and a written plan acceptable to the City to correct the observed deficiencies in Consultant's performance. Consultant shall provide written assurances and a written plan within thirty (30) days from its receipt of the City's request and shall thereafter diligently commence and fully perform such written plan. Consultant acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach of this Agreement.

9. OWNERSHIP AND USE OF MATERIALS

- A. **Ownership of the Materials.** Consultant hereby agrees to provide to a private, not-for profit, successor, and if there is none, then assigns to the City and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the City, the Consultant, the Consultant's subcontractors or third parties at the request of the Consultant (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation. Consultant shall be permitted to retain copies, including reproducible

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copies and computerized copies, of said Documents and Materials. Consultant agrees to take such further steps as may be reasonably requested by City to implement the aforesaid assignment. If for any reason said assignment is not effective, Consultant hereby grants City and any assignee of the City an express royalty – free license to retain and use said Documents and Materials. The City's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Consultant's Services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for. Consultant shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Consultant and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the City harmless from any claims for infringement of patent or copyright arising out of such selection. The City's rights under this Paragraph shall not extend to any computer software used to create such Documents and Materials.

- B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, will be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.
- C. **Survival of Ownership and Use Provisions.** The provisions contained in Section 9, Ownership and Use of Materials survives the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

10. CONFIDENTIALITY

- A. **No Disclosure.** Consultant must keep confidential and may not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant may not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant must promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section will survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant will not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received will be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City will not be liable or responsible for the

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disclosure of any such records and the Consultant will indemnify, defend, and hold the City harmless for any such disclosure.

11. CONFLICT OF INTEREST

Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City relating to this Agreement or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.

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

In addition, Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they will conduct their duties related to this Agreement with impartiality, and must, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;
- B. May not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;
- C. May not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- D. May have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant must promptly declare it to the City, and;
- E. May not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

12. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties will make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City's Project Representative and Consultant's Project Manager will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter will be promptly referred to the Mayor or Mayor Pro

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Tempore and the Consultant's Chairperson of the Board of Directors, who will meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.

- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the Mayor or Mayor Pro Tempore pursuant to subsection B above, either Party may, by notice to the other Party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation may not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) will be borne equally by the parties, and each Party will bear its own costs of participating in mediation. The mediation will take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 will be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute will be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator will have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and is subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" will be determined in the Arbitration, and the Prevailing Party will be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs will include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees will be considered costs recoverable in that proceeding, and be included in any award.

13. TERMINATION OF AGREEMENT

- A. **Termination by City for Cause or Default.** The City reserves the right to terminate this Agreement if Consultant fails to perform the required Services within the term and/or in the manner provided under this Agreement and fails to correct the performance as stipulated within Section 8, Assured Performance, of this Agreement.
- B. **Termination/Disestablishment of District.** The City has and reserves the right to suspend, terminate or abandon the execution of any work by the Consultant without cause at any time after the adoption of resolution of intention to disestablish the CHID pursuant to California Property and Business Improvement District Law of 1994 by City and upon providing Consultant written notice or a copy of the adopted resolution of intention. In the event the City shall disestablish the CHID, the Consultant shall be entitled to retain CHID revenues only for paying the Consultant's current liabilities to the CHID. Pursuant to California Property and Business Improvement District Law of 1994,

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Consultant shall refund to the City any remaining CHID revenues or any revenues derived from the sale of assets acquired with the CHID revenues to enable the distribution of the revenues back to businesses who were levied the assessments. Consultant agrees that City has the right and reserves the right to deny the transfer of CHID revenues or suspend, terminate, or abandon the execution of work by the Consultant in the event the CHID is terminated.

- C. **Termination by Consultant for Cause or Default.** Consultant reserves the right to terminate this Agreement if City fails to perform any of its duties or obligations under this Agreement, including but not limited to, failure to timely remit CHID assessment fees due to Consultant, and fails to correct such performance within thirty (30) days of receipt of a Notice of Termination from Consultant.

14. LEGAL ACTION / VENUE

- A. Should either Party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.
- B. Venue for any such action relating to this Agreement will be in Monterey County.
- C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the Prevailing Party may recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the Party may be entitled.

15. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination.** During the performance of this Agreement, Consultant, and its subconsultants, may not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.
- B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.
- C. **Force Majeure.** Either Party is absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the Party's willful or negligent acts or omissions, and to the extent that they are beyond the Party's reasonable control.

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- D. **Headings**. The headings do not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement**. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and will prevail over any other provision of this Agreement in the event of inconsistency between them.
- F. **Conflict between Agreement and Exhibits**. In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement will take precedence.
- G. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and may be signed in counterparts, but all of which together will constitute one and the same Agreement.
- H. **Multiple Copies of Agreement**. Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that governs should any difference exist among counterparts of this Agreement.
- I. **Authority**. Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such Party and bind the Party to the terms and conditions of this Agreement.
- J. **Severability**. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Limitations of liability and indemnities will survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- K. **Non-exclusive Agreement**. This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.
- L. **Assignment of Interest**. The duties under this Agreement are not assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer constitutes a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.
- M. **Laws**. Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement

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will be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

CONSULTANT

Mayor, City Administrator, or Designee Signature

Consultant Signature

Chip Rerig

Printed Name

City Administrator

Title

Visit Carmel

APPROVED AS TO FORM:

By: _____
Brian Pierik, City Attorney

Date: _____

ATTEST:

By: _____
Britt Avrit, MMC, City Clerk

Date: _____

Exhibit "A" Management District Plan



**CARMEL HOSPITALITY
IMPROVEMENT DISTRICT
MANAGEMENT DISTRICT PLAN**

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I. OVERVIEW

Developed by the City of Carmel-by-the-Sea, Visit Carmel, and Carmel lodging businesses, the Carmel Hospitality Improvement District (CHID) is an assessment district formed to provide targeted marketing to specifically benefit assessed businesses. This approach has been used successfully for the past five years in Carmel-by-the-Sea pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The CHID is proposed to be renewed for ten (10) years as allowed by the PBID Law and this Management District Plan (Plan) sets forth the services to be provided and budget of the CHID, assessments to be levied to fund the CHID, special benefits provided to the assessed businesses, and implementation and governance of the CHID.

Location: The CHID includes all lodging businesses within the City boundaries of the City of Carmel-by-the-Sea, as shown on the map in Section IV Boundary.

Services: The CHID is designed to provide specific benefits directly to payors through targeted marketing services designed to increase overnight tourism and associated room sales and revenue therefrom for assessed businesses, with particular concentration on increasing overnight sales during lower visitation periods.

Budget: The total CHID annual budget for the *initial* year of its ten (10)-year renewed term is anticipated to be approximately \$800,000. This budget is expected to fluctuate as occupancy rates stabilize and room rates vary.

Cost: The annual assessment rate shall be two percent (2%) of gross room rental revenue on short term stays (less than 31 days), with the ability to raise the assessment rate by no more than one-half of one percent (0.5%) in any one year up to a maximum of three percent (3%), as specified in Section VII. Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

Collection: The City will be responsible for collecting the assessment on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the CHID.

Duration: The CHID will be renewed for a ten (10) year term, beginning March 1, 2021 through February 28, 2031. Once per year, beginning on March 1, 2022, there is a 30-day period in which owners of assessed businesses paying more than fifty percent (50%) of the assessment may protest and initiate a City Council hearing on CHID termination.

Management: Visit Carmel will continue to serve as the CHID's Owners' Association and must provide annual reports to the City Council. The Visit Carmel Board of Directors, comprised of a minimum of six (6) business owners or their representatives paying the CHID assessment, will be responsible for managing funds and implementing programs in accordance with this Plan.

II. BACKGROUND

Property and Business Improvement Districts (PBIDs) utilize the efficiencies of private sector operation in the market-based promotion of business districts. PBIDs allow business owners to organize their efforts to increase sales and promotional efforts. Business owners within the district fund a PBID, and those funds are used to provide services that the businesses desire and benefit the businesses within the district.

Property and Business Improvement District services may include, but are not limited to:

- Marketing of the District
- Business Promotion Activities
- Infrastructure Improvements

In California, PBIDs are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). The PBID Law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. *The key difference between PBIDs and other special benefit assessment districts is that funds raised are managed by the private non-profit corporation governing the district.*

There are many benefits to Business Improvement Districts:

- Funds cannot be diverted for other government programs;
- Services are customized to fit the needs of each district;
- They allow for a wide range of services, including those listed above;
- Property and Business Improvement Districts are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable funding source for business promotion.

The PBID Law is provided in Appendix 1 of this document.

III. EXISTING CHID AND RENEWAL

The existing CHID was implemented on March 1, 2016 with a five (5) year term and expires on February 28, 2021. It provides for a 1% assessment rate on gross room rental revenue per overnight stay. This Plan renewal proposes a 2% assessment rate, with the ability to increase the assessment rate to 3%, for a ten (10)-year term expiring February 28, 2031.

There are several specific reasons why the CHID renewal is crucial at this time:

A. The Need to Increase Occupancy

Occupancy rates for Carmel-by-the-Sea hotels during the March/April 2020 bi-monthly period were reported at 15%, as compared to 65% during the same period of 2019. The May-June 2020 reporting period is likely to show similarly dismal numbers as all leisure travel was essentially closed during May and half of June.

The catastrophic impact the Covid-19 pandemic has had on decreased tourism in Carmel-by-the-Sea, the state of California, and throughout the country¹, as well as the predicted slow recovery rate of both the economy and individual mindsets toward travel², supports the strong need to secure a stable, self-generating marketing fund that will be vital for Carmel-by-the-Sea to compete for visitation.

Even as leisure travel has opened, the regular visitation patterns of year's past will continue to be severely disrupted. While there are indications of pent up desire for travel, the situation continues to be tenuous. The virus continues to spread, outbreaks are likely, shutdowns may occur and reoccur, and the economy is unstable. In addition, the lack of any international visitation for the indefinite future will negatively impact the mid-week and off-season months.

Visit Carmel's marketing programs must be thoughtful and strategic. With the goal of supporting the lodging businesses but not at the expense of the health of the destination and the community.

B. An Opportunity to Increase City Tax Revenue

As with many communities around the country, the pandemic has decimated the City's budget, due to the plunge in hotel, restaurant, and retail sales. But with Carmel's interdependence on tourism as its main economic driver, the Village is more severely impacted than a typical small city. Indeed, the City's projected 2020-21 budget indicates projected revenue of about \$18.6 million, a 33% decrease from the previous year.

With the assessment funds generated and the focus on marketing to increase overnight visitation, so too will the City's TOT and sales tax revenue benefit.

¹Total travel spending in the U.S. is predicted to drop 45% by the end of this year. International inbound spending is expected to fall 75%. FULL FORECAST: https://www.ustravel.org/system/files/media_root/document/Research_Travel-Forecast_Summary-Table.pdf

²Since the beginning of March, the COVID-19 pandemic has resulted in nearly \$237 billion in losses for the U.S. travel economy. Tourism spending in California is expected to drop to \$75.4 billion in 2020, about half of the 2019 total, erasing a decade of growth. RECAP: https://www.ustravel.org/sites/default/files/media_root/document/Coronavirus_WeeklyImpacts_06.18.20.pdf and <https://industry.visitcalifornia.com/marketing-communications/coronavirus>

C. Stable Funding for Hospitality and Tourism Promotion

The renewal of the CHID will continue to provide a stable source of funding for consistent hospitality and tourism promotion efforts, free of the political and economic circumstances that can complicate funding for promotion of the hospitality and tourism industry.

D. The Need to Educate the Visitor on Responsible Travel

We are only in the initial stages of allowing leisure travel back to Carmel-by-the-Sea, post-Covid. However, it already has become clear that the way to travel safely and responsibly will be different than ever before. Increased demands on both the visitors and the hospitality community will require vigilance, creativity, flexibility, and an ongoing education on protocols. CHID funds will also be used to create and disseminate the messaging we need in order to keep our hospitality and tourism economy thriving and the health of our community safe.

E. Better Able to Compete

Finally, as Carmel-by-the-Sea begins the long road to recovery, we will be competing with destinations throughout the state—many vying for the attention of a similar demographic and geographic profile. The hospitality and tourism industry is a sophisticated, competitive industry in California with cities and counties vying for visitor business. Visit Carmel compares* to other California destination marketing organizations, also known as Tourism Improvement Districts (TID), as follows:

District	Annual TID/HID Revenue*	Assessment Rates	Other Guest Levies
Napa Valley	\$6,500,000	2%	12%
Santa Barbara South Coast	\$5,700,000	\$1-\$7/ night	11%
Sonoma County	\$4,700,000	2%	12%
Newport Beach	\$4,500,000	3%	10%
SLO County TMD	\$4,488,000	1.50%	13%
Monterey County	\$4,307,000	\$1 - \$2.50/night	10%
SLO (Unincorp)	\$3,724,000	2%	10%
South Lake Tahoe	\$2,680,000	\$3 - \$4.50/night	12%
SLO (City)	\$1,867,000	2%	12%
Pismo Beach	\$1,750,000	1%	12%
Carmel (post-COVID @2% - forecast 3-4 yrs)	\$1,300,000	2%	10%
Paso Robles	\$1,280,000	2%	12%
Laguna Beach	\$950,000	2%	12%
Morro Bay	\$835,000	3%	12%
Carmel (proposed)	\$800,000	2%	10%
Healdsburg	\$741,000	2%	14%
Sonoma City	\$730,000	2%	10%
Carmel (pre-COVID)	\$660,000	1%	10%
Truckee	\$656,400	2%	10%

Source: Civitas TID grid, with info July 2020 - <https://civitasadvisors.com/wp-content/uploads/2020/08/Global-TID-Matrix-7-22-2020.pdf>

*Note: These are revenues generated by assessment only and do not reflect full DMO revenues.

IV. BOUNDARY

The CHID will include all lodging businesses, existing and in the future, available for public occupancy within the city limits and as depicted by the boundaries shown on the map below.

Lodging business means: any building, portion of any building, or group of buildings in which there are guest rooms or suites, including housekeeping units for transient guests, where lodging with or without meals is provided. Lodging business does not include:

- Vacation time-share facilities;
- Vacation rentals, defined as a single family home, townhome, or condominium that is available for rent; and
- Recreational vehicle (RV) parks.

The boundary, as shown in the map below, currently includes 44 lodging businesses. A complete listing of the lodging businesses within the proposed CHID can be found in Appendix 2.



V. SERVICES

Assessment funds will be spent on specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost of conferring the benefits or granting the privileges. The privileges and services provided with the CHID funds are activities and improvements, available only to assessed businesses, designed to increase overnight stays and revenue therefrom.

A. Integrated Marketing Program

An integrated strategic marketing program will promote assessed lodging businesses. The marketing program will account for approximately 70% of the budget and have a central theme of promoting Carmel-by-the-Sea as a desirable place for visitors. However, the program will have the over-arching goal of increasing guests and sales at assessed businesses and may include the following activities:

- Internet marketing efforts, including the use of social media, to increase awareness and optimize internet presence to drive customers and sales to assessed businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive customers and sales to assessed businesses;
- Public relations campaigns to increase awareness and brand image using earned media coverage, including familiarization tours for media and influencers and expenses incurred therein;
- Attendance at media events and/or trade shows to promote assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance at professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract customers to assessed businesses;
- Development and maintenance of a website designed to promote assessed businesses; and
- Outside agency or independent contractor fees for providing marketing services.

B. Administration

The administration portion of the budget will account for approximately 18% of the budget and utilized for administrative staffing costs, office costs, advocacy and other general administrative costs such as insurance, legal, and accounting fees.

C. Contingency/Reserve

A prudent portion of the budget, approximately 11%, will be allocated to a contingency fund, to account for lower than anticipated collections or a predicted need for cash flow stabilization. Contingency funds may be held in a reserve fund or utilized for other programs or services authorized by the PBID Law, administration or renewal costs at the discretion of the Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the Board. The reserve fund may be used for the costs of renewing the CHID.

D. City Collection Fee

The City shall retain a fee equal to one percent (1%) of the amount of assessment collected, and not to be less than \$6,500 collected during each one-year period, to cover its costs of collection and administration. The minimum fee amount will be evaluated annually and adjusted as needed to ensure city's administrative costs remain covered.

VI. BUDGET

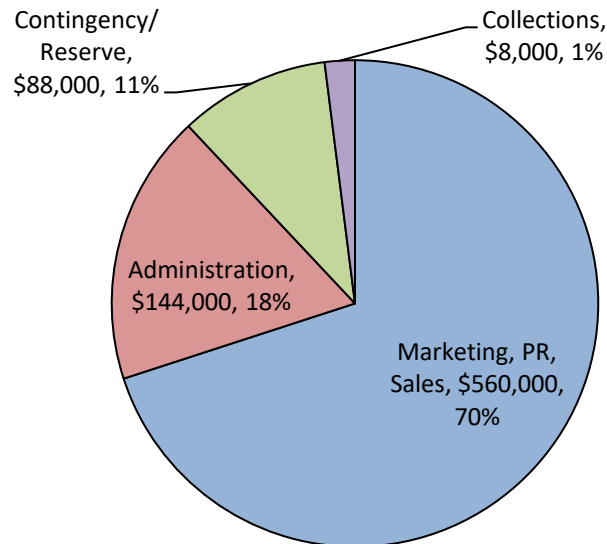
A. Annual Budget

The total ten (10) year budget, based on the two percent (2%) rate of assessment, is projected at approximately \$800,000 for the initial year, or \$8,000,000 total through February 28, 2031. This budget is expected to fluctuate as businesses open and close and room occupancy and rates change, but is not expected to significantly change over the life of the CHID. Should the assessment rate be increased to three percent (3%) as provided by Section VII below, the annual budget could be increased up to approximately \$1,200,000, subject to the fluctuations noted.

B. Budget Allocations

The budget allocations for the initial year are shown below. Although actual annual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain consistent. However, the Visit Carmel Board of Directors shall have the authority to adjust categorical allocations by up to fifteen percent (15%) of the total budget each year. In the event of a legal challenge against the CHID, any and all assessment funds may be used for the costs of defending the CHID, the City, and Visit Carmel related to the CHID.

The initial annual budget of \$800,000 will be allocated as follows:



C. GAAP Compliance

Each budget category includes all costs related to providing that activity or improvement, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the Marketing, Public Relations, Sales & Promotion budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of employing an individual staff member may be allocated to multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the activities and improvements below will be determined by the CHID Management Committee on an as-needed basis and detailed (number of employees and cost of salaries and benefits) in the annual report to the City.

VII. ASSESSMENT

A. Assessment

The annual assessment rate is two percent (2%) of gross room rental revenue on short term stays (less than 31 days). Assessments will not be collected on gross room rental revenue resulting from stays following the thirtieth (30th) consecutive day of occupancy, nor on stays by any Federal or State of California officer or employee when on official business, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.

The term “gross room rental revenue” as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

During the ten (10) year term, the assessment rate may be increased by the CHID/Visit Carmel Board to a maximum of three percent (3%) of gross lodging revenue. The maximum assessment increase in any year shall be one-half of one percent (0.50%) of gross room rental revenue. In any case, the annual assessment cannot exceed the actual costs to operate the District in any given year.

The assessment is levied upon and is a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall be disclosed as the “CHID Assessment.” The assessment is imposed solely upon and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds shall not be issued.

B. Penalties and Interest

The City shall be responsible for collection of delinquent assessments. The City of Carmel-by-the-Sea shall retain any penalties or interest collected with unpaid assessments as its fee for collecting the delinquent assessments. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any assessed business which fails to remit payment of assessments within fourteen (14) days of the due date shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* If an assessed business fails to remit any delinquent remittance within sixty (60) days following the date on which the remittance first became delinquent, it shall pay a second delinquency penalty of ten (10%) percent of the amount of the assessment in addition to the amount of the assessment and the ten (10%) percent penalty first imposed.
3. If the City determines than an assessed business is delinquent, the assessed business can be sent directly to collections without further review and the assessed business will be responsible for all late fees, interest, and collection fees.

4. *Fraud*: If it is determined that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above.
5. *Interest*: In addition to penalties imposed, any assessed business which fails to remit any assessment shall pay simple interest at the rate of six percent (6%) per year or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent until paid.
6. *Penalties Merged With Assessment*: Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid.

C. Time and Manner for Collecting Assessments

Visit Carmel shall be responsible for educating new and existing businesses in the CHID of its existence. The City shall make its best efforts to notify Visit Carmel when a business closes, opens or changes ownership within the CHID. The CHID assessment provided for under this Plan will be implemented beginning March 1, 2021 and will continue for ten (10) years through February 28, 2031. The City will be responsible for collecting the assessment on the gross room rental revenue on a bi-monthly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each business.

The City's cost of pursuing and collecting delinquent assessments shall be paid from the penalties and interest charged on delinquent assessments or the contingency portion of the budget. If the penalties and interest do not cover the City's cost, or if any portion of penalties and interest are waived in the action to collect the delinquent assessment, the City shall be reimbursed for its costs from the contingency portion of the budget. If the City pursues delinquent Transient Occupancy Tax and delinquent CHID assessment in the same action, only the proportionate cost of collecting the assessment may be retained by the City from the assessment penalties and interest collected or charged to the contingency portion of the budget.

The City shall forward the assessments collected to Visit Carmel within 30 days from collection.

VIII. CALIFORNIA CONSTITUTIONAL COMPLIANCE

The CHID is subject to certain provisions of the California Constitution. Although it levies an assessment, the CHID is not a property-based assessment subject to the requirements of Article XIII D of the Constitution (“Proposition 218”). The Court has found, “Proposition 218 limited the term ‘assessments’ to levies on real property.”¹ Rather, the CHID assessment is a business-based assessment, and is subject to Article XIII C of the Constitution (“Proposition 26”). Pursuant to Proposition 26 all City levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the CHID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

A. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed lodging businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific lodging businesses within the CHID. The activities described in this Plan are specifically targeted to increase overnight stays for assessed lodging businesses within the boundaries of the CHID, and are and shall be narrowly tailored. CHID funds will be used exclusively to provide the specific benefit of increased overnight stays directly to the assesseees. Assessment funds shall not be used to feature non-assessed lodging businesses in CHID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by the CHID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in gross overnight stays and revenue therefrom. The specific benefit of an increase in gross overnight stays for assessed lodging businesses will be directly provided only to lodging businesses paying the CHID assessment, with sales and marketing programs promoting only those businesses paying the assessment. The CHID programs will be designed to increase gross overnight stays at each assessed lodging business. Because they are necessary to provide the CHID programs that specifically benefit the assessed lodging businesses, the administration, and contingency/reserve, and collections expenditures also provide the specific benefit of increased gross room sales to the assessed lodging businesses.

Although the CHID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific benefit to the payer.”³

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

³ Government Code § 53758(a)

B. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing services like those to be provided by the CHID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayer occurs incidentally and without cost to the payer as a consequence of providing the specific government service to the payer.”⁶

C. Reasonable Cost

CHID activities and improvements will be implemented carefully to ensure they do not exceed the reasonable cost to the City of such activities and improvements. The full amount assessed will be used to provide the activities and improvements described herein. Funds will be managed by the Visit Carmel Board of Directors, and reports submitted on an annual basis to the City. Only assessed lodging businesses will directly benefit from other CHID-funded services. Non-assessed lodging businesses will not directly receive these, nor any other, CHID-funded services and benefits.

The CHID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room sales revenue, that portion of the promotion or program generating that gross revenue shall be paid with non-CHID funds. CHID funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room sales for non-assessed businesses.

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

IX. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the CHID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Carmel will serve as the Owners' Association for the CHID. Visit Carmel will maintain its Board of Directors, comprised of a minimum of six (6) business owners, or their representatives, paying the CHID assessment, which will be responsible for implementing this Plan. Visit Carmel shall be responsible for managing funds and implementing programs in accordance with this Plan and by direction of the Board of Directors and must provide annual reports to the City Council.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Visit Carmel Board, the Carmel Restaurant Management Committee, and certain committees wherein the CHID is discussed must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

Visit Carmel shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report may be incorporated into other City-related Annual Reports (such as the Carmel Restaurant Improvement District), may be presented at the end of the 1st quarter of the current fiscal year, and shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for the next fiscal year.
- An estimate of the cost of providing the improvements and the activities for that upcoming fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

**STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements,

maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. "Assessment"

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall

comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts

established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category

of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public

hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

- (1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
- (2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

- (1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
- (2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners

or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Adobe Inn	Forest Lodge
Best Western Town House Inn	Hofsas House
Briarwood Inn	Horizon Inn
Candlelight Inn	Hotel Carmel
Carmel Bay View Inn	Lamplighter Inn
Carmel Cottage Inn	La Playa Hotel Carmel
Carmel Country Inn	L'Auberge
Carmel Fireplace Inn	Lobos Lodge
Carmel Garden Inn	Monte Verde Inn
Carmel Green Lantern Inn	Normandy Inn
Carmel Inn & Suites	Ocean View Lodge
Carmel Lodge	Pine Inn
Carmel Oaks	Seaview Inn
Carmel Resort Inn	Svendsgaards Inn
Carmel Stonehouse Inn	Tally Ho
Carriage House	Tradewinds Inn
Casa de Carmel	The Getaway
Coachman's Inn	The Hideaway
Colonial Terrace Inn	The Homestead
Comfort Inn	Vagabonds House
Cypress Inn	Wayfarer
Edgemere Cottages	Wayside Inn