

THE NORTH FREMONT BICYCLE AND PEDESTRIAN IMPROVEMENTS PROJECT

A Bike Path to Nowhere?



SUMMARY

On April 1, 2014 the City of Monterey adopted the North Fremont Specific Plan (NFSP). That action was the first step in the process of the planning and execution of a major infrastructure renovation of North Fremont Street stretching from Casa Verde Way to Canyon del Rey Boulevard (SR 218).

That project, labeled the North Fremont Bicycle and Pedestrian Improvement Project (NFBPIP), was initially planned to be multifaceted and included Class 2 bike lanes on either side of North Fremont to run from Casa Verde to Canyon Del Rey. According to the City, the bike lanes would at that point connect to the Transportation Agency for Monterey County's (TAMC) 30-mile bike path project called the Fort Ord Rec Trail and Greenway (FORTAG).

Along the way, the original idea of having Class 2 bicycle lanes running both directions between Casa Verde Way and Canyon del Rey evolved into a design comprised of, according to the City's website, California's first Class 4 bicycle lanes in the roadway median, running from Casa Verde Way reaching only as far as Casanova Avenue. The

original plan for the NFBPIP to run all the way to Canyon del Rey was modified because of budget overruns. By adopting this modification, the NFBPIP was left with incomplete access to the envisioned FORTAG project, contributing to the public perception that this was a “bike lane to nowhere.”

Since the NFBPIP was completed in September of 2019, it has received numerous awards, including the “2020 Caltrans Excellence in Transportation Award” (Appendix A). The project was also named “The Best Public Boondoggle/Best Way to Anger Commuters” by the Monterey County Weekly readers in its annual “Best of Monterey County” edition, thereby creating what the Civil Grand Jury sees as a disconnect between the experts and the general public. The 2020/21 Monterey County Civil Grand Jury investigated how decisions that were made along the way could have led to two such strongly opposed opinions as to the worthiness of the project, and to make recommendations to the City to enhance their procedures and communicate better with the residents of Monterey on future City projects to help avoid this disconnect.

GLOSSARY

ARC: City of Monterey Architectural Review Committee

Caltrans: California Department of Transportation

FORTAG: Fort Ord Rec Trail and Greenway

Gap Project: The bike lane and pedestrian project to be built between Casanova Avenue and Canyon Del Rey Boulevard (SR218)

NFBPIP: The North Fremont Bicycle and Pedestrian Improvements Project

TAMC: Transportation Agency for Monterey County

BACKGROUND

While the Civil Grand Jury is not focusing on the choice of bike lanes for the NFBPIP, a quick primer on bike lanes will be useful for the purpose of reading this report. Bike lanes, or bikeways, are broken down into classes. Generally, higher class numbers correspond to being deemed safer by transportation experts. Class 1 is a shared path with pedestrians. Class 2 bikeways (the most common type of bikeway) are bike lanes

established along streets and are defined by pavement striping and signage and can be buffered from traffic by using chevron or diagonal markings. Class 3 bikeways, or bike routes, designate a preferred route for bicyclists on streets shared with motor traffic and not served by a dedicated bikeway. These bike routes are generally not appropriate for streets that have higher speed traffic, such as North Fremont. Class 4 bike lanes are physically separated from traffic utilizing vertical features such as grade separation, flexible posts, inflexible barriers, bollards, railings, or on-street parking.¹

North Fremont is one of Monterey's major thoroughfares, averaging approximately 28,000 car trips per day.² It has essentially remained untouched for nearly fifty years. The North Fremont Bicycle and Pedestrian Improvement Project was to be one of the largest public works projects in the City's history with an original price tag estimated to be just over \$10 million.

\$ Project Funding	
\$	Active Transportation Grant (CalTrans), \$6,480,000
\$	Regional Surface Transportation Program (TAMC), \$1,933,000
\$	Measure P, \$700,000
\$	Measure X, \$810,000
\$	Neighborhood Improvement Program, \$200,000

From City of Monterey Website

In September of 2019, after approximately 15 months of construction, the City of Monterey completed the NFBPIP, which they describe as the first ever Class 4 bike lanes located in the median of a street in California. The street is North Fremont in Monterey, CA and the bike lanes run for one-half mile between Casa Verde Way and Casanova Avenue. Based on the Civil Grand Jury's research into what other cities are doing with bike lane design, it is clear that the NFBPIP design is an innovative and creative way to separate bicyclists from the traffic to keep them as safe as possible.

The NFBPIP project cost was about \$8.5 million and was mostly paid for by a \$6.48 million federal grant distributed through the Caltrans Active Transportation Program and a \$1.933 million grant from the Transportation Agency for Monterey County (TAMC). In

¹ Caltrans Design Information Bulletin 89-01

² North Fremont Specific Plan

their 2014 Caltrans grant application the City described the project's purpose as providing "safe access to bicycle and pedestrian facilities for disadvantaged communities." At that time, the NFBPIP envisioned Class 2 bike lanes on both sides of North Fremont running between Casa Verde and Canyon Del Rey, as described in the North Fremont Specific Plan. The grant funds were awarded on this design concept. Along the way, the project scope and design changed to what you see today, with Class 4 lanes located in the median, running from Casa Verde to Casanova, eliminating the final block between Casanova and Canyon Del Rey.

The path that the City took to arrive at the current design of the NFBPIP is the focus of this Civil Grand Jury report, with the goal to avoid the "perception disconnect" between the City and some residents that we have found exists on the NFBPIP. Better communication and improved design on future projects can be the result.

METHODOLOGY

The Civil Grand Jury employed several methods of investigation of the NFBPIP project. Initially, we gathered public documents pertaining to all aspects of this project via extensive internet searches as well as requested documents obtained from the City. We then held a number of interviews. Finally, we performed a site visit to the NFBPIP.

DISCUSSION

The North Fremont Bicycle and Pedestrian Improvements Project can be segmented into the five broad categories discussed below.

Timeline of NFBPIP

In an effort towards revitalizing what the City of Monterey described as a "struggling neighborhood commercial business district," the North Fremont Specific Plan (NFSP) was adopted in 2014 and amended in August of 2016. The NFSP's intention was to "serve as a guide for future development along North Fremont Street, an area identified by the city's General Plan as a "Mixed-Use Village," which is a "mix of residences, retail

shops, services and jobs in close proximity.” These types of areas are designed to be well served by transit and bicycle routes. According to the NFSP, one of its goals is to: “*Create Comprehensive, Multi-Modal Transportation and Parking Plan that addresses safety and security.*” One component of this Plan is titled “challenges & opportunities,” which contains a section captioned “Bicycle Circulation,” stating:

The City’s Multi-Modal Mobility Plan (MMMP) designates North Fremont as an important connector for inner-city bicycle circulation. Consistent with the MMMP, the streetscape plan includes new Class 2 bicycle lanes along North Fremont in both directions.

The planning process for the NFSP included several community meetings with businesses and residents in the adjacent areas as well as an Ad Hoc Committee made up of Planning Commissioners.

As explained later in this Report, the NFBPIP design was changed from Class 2 bike lanes running from Casa Verde to Canyon Del Rey to Class 4 bike lanes located in the median running from Casa Verde to Casanova, leaving the original bike lane design running the final one block from Casanova to Canyon Del Rey. This design change happened sometime after February 2016 and was approved by Caltrans in June of 2016. The North Fremont Specific Plan was amended in August of 2016 but did not include this Class 4 bike lane concept.

In 2014, the City of Monterey staff started its research in order to acquire grant funds from the State of California to help finance a portion of this project. In September 2014, the City received an award of \$6.48 million from the California Department of Transportation for the NFBPIP. In August of 2015, the City appropriated the \$6.48 million Caltrans grant funds for the project by approving a resolution that described the NFBPIP as having Class 2 bike lanes on both sides of North Fremont.

A Request for Proposal was issued by the City in order to receive bids for the design of the overall project. On October 7, 2014, the City Council adopted a resolution³ awarding

³ A Resolution is a document used by Governmental Agencies when dealing with temporary or special matters and involving only a factual determination that conditions necessary for the operation of a statute

the NFBPIP preliminary design services contract to the firm Kimley-Horn. The adoption of a resolution, with findings, creates a record of action taken by the city council. The description of the NFBPIP in that approved resolution reads:

WHEREAS the North Fremont project includes the design and construction of Class 2 bicycle lanes along both sides of North Fremont, with signing and bicycle detection at each of the five intersections. It will also include changes to the travel lanes and median to accommodate bicycle lanes and Bus Rapid Transit queue jump lanes, shortened pedestrian crossings, median refuges, audible pedestrian signals, and ADA⁴ improvements.

On August 18, 2015, the City Council adopted a resolution to appropriate the Caltrans \$6.48 million grant. That resolution contained the following project description:

WHEREAS the North Fremont project includes the design and construction of Class 2 bicycle lanes along both sides of North Fremont (from Casa Verde to Canyon Del Rey). This project also includes ADA improvements at five intersections.

On February 2, 2016, the City Council adopted a resolution awarding the final design contract to Kimley-Horn in the amount not to exceed \$896,806.00. The staff report described the NFBPIP consistent with the language of the October 7, 2014 resolution but did not include the project description in this resolution.

On May 1, 2018, the City Council adopted a resolution awarding the construction contract for the NFBPIP. The staff report⁵ contained the following partial description:

The project includes the design and construction of Class IV (protected bike lanes) along both sides of North Fremont and adjacent to the median ...

The adopted resolution, however, did not contain the revised project description. According to the interviews and research undertaken by the Civil Grand Jury, it appears

or ordinance have been met and creates a record of action by the approving body. League of California Cities

⁴ Americans with Disabilities Act

⁵ Staff Report means any memorandum prepared by a member of City staff pertaining to a matter to be considered by the policy body at the meeting.

that this was the first time, since the project was revised in 2016, that any City Council agenda packet contained the Class 4 bike lane description. However, the City Council never approved a revised resolution containing the Class 4 Bike Lane modification, thereby not creating an accurate record of action. For instance, the City of Pacific Grove is involved in a significant problem relating to a mistake in a City Council approved Resolution⁶. The ramification of that error highlights the importance of complete and accurate resolutions.

Some other relevant facts gleaned from our investigation:

- In June of 2016 Caltrans approved the change from Class 2 to Class 4 bike lanes for the NFBPIP running from Casa Verde to Casanova and retaining the improvements from Casanova to Canyon Del Rey.
- On Jan 25, 2018, the City solicited bids for the NFBPIP.
- Bids for the NFBPIP were opened on March 13, 2018 and all bids exceeded the project budget.
- In order to bring the project within budget, a request for a Project Scope Change to delete the Casanova to Canyon del Rey portion of the NFBPIP was prepared by the City on March 19, 2018 for submittal to Caltrans.

The City of Monterey Modifies the NFBPIP

It is not unusual for major projects to experience design changes as dictated by any number of construction conditions. This is certainly true for the NFBPIP.

The NFBPIP was initially a standard, albeit large, city street improvements project that contained common Class 2 bike lanes on each side of the street like many other projects, including one recent prominent project located on Broadway in Seaside.



Seaside Project March 7, 2021

⁶ ["Pacific Grove's new sales tax halted by state" – Monterey Herald, Tuesday, February 15, 2021 \(Appendix B\)](#)

When the decision was made to change from the common Class 2 bike lanes to California's first ever Class 4 bike lanes located in the median of a busy street, that's when this project became something other than standard. According to the City, the change from Class 2 to Class 4 was made because Class 4 bike lanes are the safest bike lanes possible for shielding cyclists from traffic and other obstacles normally encountered on streets. However, this choice of replacing Class 2 with Class 4 bike lanes came with an associated cost, exacerbating what was already an overbudget project.

When project bids were opened in March 2018, each bid exceeded the adopted budget. It was at this point that a critical decision was made by the City. It was decided to delete a portion of the bike lane project stretching from Casanova Avenue to Canyon del Rey Boulevard. By removing this part of the NFBPIP, the project was now within budget. Paperwork was sent to Caltrans for approval. The public was not made aware at that time that a critical gap would be created leaving the bike lane as an unviable means of connecting with the FORTAG project. The perceived "bike lane to nowhere" was now conceived. In May 2018, the City adopted a resolution to start construction, but its language did not include anything stating the fact of that the City had changed the plan for construction of Class 4 bike lanes. If the City Council had approved a revised resolution, it would have been a good opportunity to inform the public that the design had changed. In June 2018, construction began, and it would be completed in September of 2019.

One eye-opening fact learned by the Civil Grand Jury is that only about 12% of the overall cost of this project is directly attributed to the construction of the bike lanes. The balance of the total cost was for planning, design, construction, and upgrades to other public works infrastructure along the long neglected North Fremont Street. This project can be metaphorically thought of as an iceberg. The smaller portion of the project is visible while the bulk of the project is below the surface. The City missed an opportunity to communicate the overall upgrade of North Fremont by concentrating its messaging on the bike path. This miscommunication included the limited title of the project. Residents were left wondering how a simple, apparently unfinished bike path could cost \$10 million when, in reality, a major upgrade of the infrastructure, particularly sewers,

paving, signaling and drainage, of a long-neglected thoroughfare was the key value to residents from the NFBPIP.

Unplanned Maintenance Issues Appear

Any casual observer traveling on North Fremont will notice the extensive required maintenance to some of the stainless-steel uprights and to many of the horizontal cables of the railings on either side of the Class 4 bike lane. The City likely did not anticipate damage to this extent, nor did they make any added allowance for the costs involved with repairs and maintenance of the railings.



NFBPIP Railing: February 18, 2021

Some other relevant facts gleaned from our investigation include:

- Caltrans Design Guidelines for Class 4 bike paths recommend that there be a maintenance plan addressing routine maintenance and long-term maintenance needs, such as removing debris, maintaining landscaping, repairing and replacing the separation vertical elements, and maintaining the pavement and traffic control devices.
- During a presentation by the City of Monterey Engineering Department to TAMC at their March 1, 2017 meeting, the City representative was asked about maintenance for the NFBPIP. The response was that city maintenance staff would likely maintain the protected bike lanes.
- The Civil Grand Jury has found no evidence that the City has prepared a specific maintenance plan for the NFBPIP.
- There is noticeable damage to the stainless-steel uprights and horizontal cables that are sagging or broken.



Gaps in Community Communications

The City of Monterey is to be commended for a comprehensive effort to communicate with local stakeholders, including the business community, neighborhood associations, and nearby residents domiciled near North Fremont throughout the planning and construction project. The City also created two very informative websites⁷ detailing the NFBPIP's design and construction along with information regarding the other improvements to Fremont Street, and the Civil Grand Jury commends the City for this.

However, being such a large Public Works project creating California's first ever Class 4 bike lanes in the median on a street that has 28,000 car trips per day, it is incumbent upon the City to communicate these changes to all stakeholders. While nearby business and residential stakeholders received information, another key stakeholder group was less informed, specifically all other residents of Monterey.

Some public building projects and most private building, landscape or signage projects are required to go through a design approval process from the Architectural Review Committee (ARC). Depending on the scope of the project, other public hearings might be required. According to the City's website, the purpose of the Architectural Review Committee is to preserve Monterey's unique, historic character. It states as follows:

Monterey is full of character. From New Monterey to Old Town, from Fisherman's Flats to Cannery Row, each of our neighborhoods – commercial and residential – has distinct features that make it special.

In order to maintain these unique qualities, the City established an Architectural Review Committee (ARC) to encourage and promote development that is harmonious with the surrounding area as it exists.

Their website further states:

The seven-member ARC is composed of citizens with expertise and interest in design and architecture. ARC reviews all aspects of a proposed project that deal with the outside appearance.

⁷ [The North Fremont Bike and Pedestrian Access and Safety Improvements Project \(monterey.org\)](http://monterey.org/North-Fremont-Bike-and-Pedestrian-Access-and-Safety-Improvements-Project)
[North Fremont Street Corridor | Have Your Say Monterey](http://monterey.org/North-Fremont-Street-Corridor-Have-Your-Say-Monterey)

In an on-line review of all 52 published agendas for the Architectural Review Committee dating from July 1, 2015 to March 21, 2018, the Grand Jury found no evidence that the NFBPIP, as modified with the Class 4 bike lanes, was ever on the agenda for any of those meetings. There were, however, several privately owned properties located on North Fremont that were on agendas in that time frame for design review on projects including new signage, landscaping, building alterations, and new buildings.

Given that the NFBPIP contains California's first ever Class 4 bike lanes in the median of a very busy street with a highly visible railing element, we believe the NFBPIP would have benefited going through the ARC process. It would have helped get the word out citywide about the NFBPIP, thereby potentially involving more residents in the design and decision-making process. Also, given the design expertise of the ARC members, there would likely have been a thorough review of the railing design which could have led to railing design changes to prevent the significant maintenance required for the horizontal cables.

Some other relevant facts gleaned from our investigation include:

- The NFBPIP has received several design awards from the State, County, and private sector.
- There have been negative letters to the editor regarding the NFBPIP in the Monterey Herald and the Monterey County Weekly.
- There have been both informative and negative articles in the Monterey Herald and the Monterey County Weekly about the NFBPIP since the completion of the project.
- The City of Monterey held multiple meetings with the North Fremont Business Association and area Neighborhood Associations to explain the design and construction for the NFBPIP throughout the project up until completion.
- The City of Monterey has two websites, [NFBPIP](#) and [Have Your Say Monterey](#), detailing information about the NFBPIP, the Casanova to SR218 connection (Gap Project), and the overall Fort Ord Rec Trail and Greenway project known as ["FORTAG"](#).

- The City received several letters of support for the project from the North Fremont Business Association. along with various other organizations, when applying for funds and other approvals.

Bridging the “Gap”

One major complaint that the Civil Grand Jury heard during the investigation was that most casual observers only rarely see bicyclists using the current North Fremont Class 4 bike lanes. As often cited in this report, a major contributor to this situation is the existence of a “gap” in the bike lane running from Casanova Avenue to Canyon del Rey Boulevard. Planning for bike and pedestrian connection between Casanova and Canyon Del Rey (the Gap Project) is well underway and will connect the NFBPIP with the Laguna Grande Trails and FORTAG projects. To date, we are unaware of any funding the City has received in order to complete construction of the Gap Project, however, the City states that they are actively searching for funding. The City expressed hope that ridership will grow once the North Fremont bike lane is connected to the entire FORTAG project in Monterey County.

Given the high profile the NFBPIP project has attained by the media and residents, the Civil Grand Jury believes the City has an opportunity to involve all residents of Monterey for the design and construction of the Gap Project by holding public hearings before the Architectural Review Committee. Some other avenues of communication could be town hall meetings, mailers, or working with the local bike clubs.

Some other relevant facts gleaned from our investigation include:

- The design of The Gap Project has been, or is nearly, completed by the City and they are actively trying to find funding for construction.
- The City claimed that they expected to see an increase in bicyclists of 200% which amounts to 140 new daily riders in the Class 4 lanes between Casa Verde Way and Casanova Avenue.

FINDINGS

- F1. The City is to be commended for holding multiple meetings with the North Fremont Business Association and the local Neighborhood associations to inform them on the NFBPIP throughout the design and construction process.
- F2. The City is to be commended for creating two very informative websites relating to the NFBPIP.
- F3. The City did not hold any public hearings before the Architectural Review Committee for the design of the NFBPIP, which would have helped inform residents throughout the city of Monterey about the project.
- F4. The City did not hold any public hearings before the Architectural Review Committee which, given the expertise of the Committee members, could have improved on the railing design maintenance issues to help eliminate the significant maintenance needed.
- F5. The City Council did not adopt a revised resolution changing the design description of the NFBPIP from Class 2 to Class 4 bike lanes, which would have helped inform more residents citywide and would have created an accurate record of action by the City Council for the NFBPIP.
- F6. The City's failure to have a specific maintenance plan in place for the NFBPIP, as recommended by Caltrans, has led to significant maintenance issues in the first 18 months of operation.
- F7. To date, the City of Monterey has not held any public hearings before the Architectural Review Committee for the design of the Gap Project, thereby limiting the ability to inform and gain input from the residents of Monterey and missing out on possible improvements to the design by members of the ARC. This could result in more negative public opinion as well as a sub-standard design.

RECOMMENDATIONS

- R1. For all City projects that contain design elements, the City should hold Public Hearings before the Architectural Review Committee.

This process should begin by August 1, 2021.

- R2. On future City projects, the governing body of record should approve revised resolutions to document changes to a project.

This process should begin by August 1, 2021.

- R3. The City should begin holding Public Hearings before the Architectural Review Committee for their input on the Gap Project design.

This should begin by August 1, 2021.

- R4. The City should create a maintenance plan addressing routine and long-term maintenance, as recommended by Caltrans.

This plan should be made available by September 1, 2021.

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Grand Jury requests responses as follows:

From the following elected county officials within 90 days:

- City Council of the City of Monterey. All findings and recommendations

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Civil Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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APPENDIX

- A. Monterey Street Project Nets State Award, Monterey Herald, December 14, 2020
- B. Pacific Grove's New Sales Tax Halted by the State, Monterey Herald, February 15, 2021

LOCAL NEWS

Monterey street project nets state award



Crews work on the North Fremont Street project in 2019. (Monterey Herald file photo) Work crews install new traffic lights at North Fremont Street and Casa Verde Way in Monterey on Tuesday. (Vern Fisher – Monterey Herald)

By **DENNIS L. TAYLOR** | dtaylor@montereyherald.com | Monterey Herald

PUBLISHED: December 14, 2020 at 2:59 p.m. | UPDATED: December 14, 2020 at 5:11 p.m.

MONTEREY — The recently completed improvements on North Fremont Street in Monterey caught the eye of state officials who just awarded the project for “providing a safe, sustainable, integrated and efficient transportation system.”

The California Department of Transportation awarded the city with the 2020 Caltrans Excellence in Transportation award in the Transportation-Related Facilities category. Less than two dozen Excellence awards were handed out statewide.

The project, called the North Fremont Bicycle and Pedestrian Access and Safety Improvement Project, was chosen from entries across the state, including entries from local and public agencies, private contractors, consultants and Caltrans itself. A panel of judges consisting of various professionals, including engineers, environmental specialists and transportation planners reviewed the projects.

City Manager Hans Uslar called the comprehensive infrastructure and safety improvements with bicycle lane grant funds “enormous.” The \$9.4 million project, includes bike lanes in the median of the street, storm drain and traffic light upgrades and changes to intersections to allow greater pedestrian safety and ensure Americans with Disabilities Act compliance.”

“This award-winning project allowed us to complete a major segment of a regional multi-modal transportation network that benefits our residents, enhances safety, revitalizes business opportunities, manages growth and sustains our environment,” Uslar said in a written statement. “While a lot of attention has been given to the innovative bike lanes, the project’s impact on the streetscape, ADA accessibility improvements, signal upgrades and traffic flow cannot be underestimated. Very soon, residents will see new developments along this corridor spurred by this project.”



“Multi-modal” refers to streets providing safe access to vehicles, bicyclists and pedestrians. The project was supported by the North Fremont Business Association.

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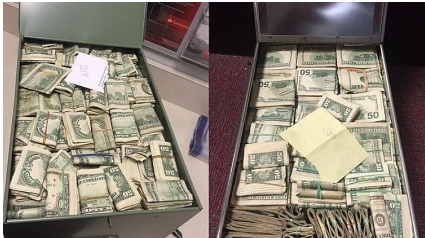
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Dennis L. Taylor | Reporter

Dennis L. Taylor has reported on diverse issues for three decades in the San Francisco and Monterey bay areas, including 10 years in the Silicon Valley business press covering venture capital and technology investments.

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BUSINESS

Pacific Grove's new sales tax halted by the state



Pacific Grove City Hall. (Monterey Herald file)

By **DENNIS L. TAYLOR** | dtaylor@montereyherald.com | Monterey Herald

PUBLISHED: February 15, 2021 at 2:00 p.m. | UPDATED: February 15, 2021 at 4:55 p.m.

PACIFIC GROVE — A state agency has told Pacific Grove officials that it will not implement a half-cent sales tax increase that voters approved on Nov. 3 because of a mistake in a resolution the City Council adopted that formalized the increase, according to a report that will be presented to elected officials Wednesday.



A state agency is suggesting a remedy that would involve holding a special election at a cost to taxpayers to re-approve the sales-tax increase measure — Measure L. There is also the specter of Pacific Grove filing legal action against the state.

The action will be costly to the city's coffers. The tax increase would add anywhere from \$700,000 to \$1 million in badly needed revenue for the city. Officials say without that revenue there would need to be a pullback on services the city provides to residents.

The increase was scheduled to take effect April 1, if the state and the city can work out the differences. But for now, the state is telling City Attorney David Laredo that the increase is a no-go.

"The California Department of Tax and Fee Administration has indicated it will not administer the tax as approved by the voters due to ambiguous language," Laredo wrote in the report to the council. Monday was a government holiday and Laredo was not available to comment.

Neither was the Department of Tax and Fee Administration, which responded to an email sent Friday requesting comment by saying it wouldn't be able to comment until sometime this week. It also cited the Presidents Day holiday as the reason.

The city has been in communication with Tax and Fee Administration Chief Counsel Robert Tucker and Karen Hughes, the supervising tax auditor. Laredo said Tucker is arranging a discussion with Nicolas Maduros, the executive director of the agency. There is no indication when that meeting will occur.

The ambiguity was not in the language of the measure, rather in a council resolution that referred to the wrong municipal code — Chapter 6.08 rather than Chapter 6.07, Laredo wrote.

The city caught the error and in December 2020 the council adopted a resolution correcting the mistake. That, apparently, was not good enough for the state agency.

"The City remains firm in its position that the ballot language complies with legal requirements, and Council's subsequent corrective action cured all harmless clerical errors," Laredo wrote. "(The California Department of Tax and Fee Administration's) narrow interpretation that Measure L attempted to amend the City's Uniform Sales and Use Tax under PGMC Chapter 6.08 is nonsensical because such effect would be unlawful and not capable of implementation."



There is also a possible problem in terminology that was used in either the Measure L description or the resolution supporting the tax increase. Laredo notes in his report that “sales tax” and “transaction tax” are one and the same as defined in another chapter of the municipal code.

This is not the first time the city and state were at loggerheads over the tax measure. After passing, the city believed the measure would take effect Jan. 1. But the Department of Tax and Fee Administration put the brakes on implementation, saying that a measure passed in November did not allow the agency enough lead time to begin collection.

Sales tax increases in the area proportionally affect tourists and visitors more than residents. An analysis conducted by Pacific Grove in the past year indicated that 70% of sales-tax revenue is generated by visitors, not residents.

Pacific Grove only gets a fraction of sales tax collected — roughly 1%. The rest goes to the state except for small amounts that come back to local county transportation funds. Cities' sales tax is capped at 2% on top of the state's 7.25% bringing the total to 9.25%. All cities along the Monterey Peninsula, except Sand City, are maxed out on the amount of sales tax they can generate unless the state adjusts its portion.

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Dennis L. Taylor | Reporter

Dennis L. Taylor has reported on diverse issues for three decades in the San Francisco and Monterey bay areas, including 10 years in the Silicon Valley business press covering venture capital and technology investments.

