ORDINANCE NO. 21-009

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADOPTING TEMPORARY OUTDOOR DINING RULES WITHIN THE CITY OF PACIFIC GROVE IN RESPONSE TO THE COVID-19 PANDEMIC HEALTH CRISIS

FACTS

1. On March 19, 2020, the Governor of the State of California first issued an Executive Order to implement restrictions upon all individuals in the State of California and imposed other requirements implemented by the California Department of Public Health (CDPH) to address COVID-19 pandemic issues and to preserve public health and safety throughout California.

2. On March 17, 2020 the Monterey County Health Department (MCHD) issued a shelter in place order, later amended several times, in response to the COVID-19 pandemic health crisis. Among other requirements, all members of the public have been required to properly wear face coverings and maintain six-foot social distancing from other individuals to stem transmission of COVID-19.

3. The high incidence of COVID-19 hospitalizations, fatalities, test positivity rates dramatically affected the state and local visitor-serving industry, with significant consequence to the local economy. Indoor dining closures and social distancing requirements have negatively affected restaurant proprietors, restaurant workers and restaurant patrons.


5. The City of Pacific Grove (City) and other local agencies have promulgated temporary rules to accommodate outdoor dining during the pandemic crisis. Notably, the Monterey Peninsula Water Management District (MPWMD) promulgated rules to temporarily modify water permitting requirements and to temporarily relax standards by which it calculates restaurant patron water demand for persons who dine outdoors. Discussion as to whether those temporary rules shall be extended remain under discussion.

6. The City Manager, acting as the emergency services director pursuant to PGMC Section 3.20.070, implemented a “Parklet Program” that allows businesses to utilize parking spaces for dining and other purposes in a safe environment to improve business during the health emergency. This action was to encourage and promote sidewalk dining to help improve the local business economy, create a more urban pedestrian environment, and promote and protect public welfare in a healthy and safe manner.

7. The City Council desires to clarify the scope and effect of the Parklet Program during this declared emergency.

- 1 -

Urgency Ordinance – Temporary Outdoor Dining Rules
8. Article 15 of the City Charter enables the Council to enact an urgency ordinance when
needed to respond to any emergency to preserve the public peace, health, safety or public
welfare. This measure is intended to facilitate efforts to stem the transmission of COVID-19.
The City has a compelling interest to stop the spread of this communicable disease. This
measure is a narrowly tailored means to achieving that objective.

9. The City Council determines this ordinance is an urgency measure needed to
immediately preserve public health, safety and welfare. It is intended this urgent ordinance shall
take immediate effect to avoid and ameliorate the threat to public peace, health, and safety.

10. This urgency ordinance is exempt from the California Environmental Quality Act
(CEQA) Guidelines Section 15269, action taken to prevent or mitigate an emergency; the City
adopts this urgent ordinance to respond to the COVID-19 pandemic health crisis.

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

SECTION 1. Facts.

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

SECTION 2. Ratification of Emergency Action.

The City Council ratifies actions of the City Manager taken, as emergency services
director pursuant to PGMC Section 3.20.070, to implement sidewalk and outdoor dining, and the
“Parklet Program”, and to suspend PGMC section 15.16.045 processes relating to sidewalks, and
PGMC section 23.70.030 relating to dining on private property, to the limited extent these
actions allow businesses to maximize dining and other purposes during the COVID-19 pandemic
emergency.

SECTION 3. Temporary Sidewalk, Outdoor Dining, and Parklet Program.

During the effective term of this ordinance, the provisions of PGMC section 15.16.045
(Sidewalk seating and sidewalk dining) shall be suspended, and in its place the following
requirements, denominated the “Parklet Program”, shall apply to sidewalk and outdoor dining:

After the effective date of this ordinance the Zoning Administrator, or designee, shall
have the authority to allow, deny, or condition use of non-sidewalk outdoor dining and parklet
use within all commercial zoning districts; the Building Official, or designee, shall have the
authority to allow, deny, or condition encroachments on public property to place tables, chairs,
benches, or other normally associated furniture on public sidewalks abutting eating
establishments for sidewalk; These approvals are subject to the following restrictions and
conditions:

(a) A parklet is a small urban park, often created by replacing two parking spaces with a patio, planters, trees, and seating. A physical boundary is required to promote safe use. Parklets shall ordinarily be limited to two parking spaces. Longer or shorter parklets may be considered based upon unique circumstances. Sides of the parklet must be transparent beginning 48” above the floor level. Flooring shall ordinarily be flush with the curb, except for locations in parking lots or other unique locations. Awnings or coverings must be approved. These must be fireproof and waterproof and cannot extend beyond the parklet. Plans must demonstrate water drainage flows under the parklet and off any overhead cover. Propane and electric heaters must be approved and conform to applicable fire standards.

(b) Tables, chairs, benches, umbrellas, waiter stands, barriers, tray stands, planters, trash receptacles, and other furniture normally associated with dining (collectively hereafter, for convenience, “furniture”) may be placed in the parklet or on the sidewalk but shall not be placed so as to obstruct the minimum unobstructed pedestrian travel width of the sidewalk defined as a minimum of four feet. All applicable Americans with Disabilities (ADA) requirement minimums shall be met. Furniture shall be of a consistent design and employ similar materials and colors as approved by the city to complement all other approved sidewalk furniture and fixtures, such as streetlights and bicycle racks, throughout the city.

(c) Sale of alcoholic beverages shall be subordinate to the primary use and shall comply with the State Alcoholic Beverage Control (ABC) license requirements for a “bona fide public eating place.”

(d) Eating establishments and all other persons are prohibited from making any modification to the public sidewalk. Minor patching of holes and cracks, and the elimination of trip and fall hazards, are to be referred to the public works department to determine whether modification should be made at City expense, or if modification shall be made at expense of the business owner.

(e) Use of sound amplification in the outdoor dining area or parklet is allowed but shall be limited to the hours of dining service, and in no event shall be allowed before 10:00 a.m. or after 10:00 p.m. Without a permit pursuant to PGMC 11.94.010 it shall be impermissible to operate or cause to operate or suffer or permit the operation of sound-amplifying device under any other circumstances whereby sounds therefrom become audible and disturbing to a person or persons beyond the boundaries of the dining area or parklet on which the amplification occurs.

(f) Sidewalk dining and associated furniture is prohibited on any public sidewalk that is less than seven feet wide unless the storefront is set back from the back of sidewalk. Further, sidewalk dining and associated furniture shall not occupy more than 45 percent of the gross total width of any public sidewalk.

(g) The eating establishment placing the furniture shall provide proof of public liability insurance, naming the city as an additional insured, in the amount and form subject to
approval of the city manager.

(h) The establishment placing furniture shall keep furniture and immediately surrounding areas clean and presentable at all times. All litter, spillage, or other materials shall be promptly removed to maintain the area in a clean condition.

(i) Approved sidewalk and outdoor dining or parklet permits allowing placement of furniture or associated furniture may be revoked by the zoning administrator at any time, for violation of any of these restrictions or conditions.

(j) Application for sidewalk, outdoor dining, parklets or placement of furniture shall be made on either by an encroachment permit or upon an application provided by the Community Development Department. The decision of the zoning administrator shall be final and not subject pursuant to PGMC 23.74.020 or 23.74.030.

(k) Sidewalk, outdoor dining and parklet permits are interruptible and terminable licenses for use granted by the city. No property interest shall be conveyed to the eating establishment or to any other person. The city shall have the right and power, acting through the zoning administrator, to revoke, prohibit, condition or limit operation and use of a sidewalk, outdoor dining or parklet permit at any time by reason of anticipated, threatened, or actual problems or conflicts in the use for the sidewalk or surrounding area. Such circumstances may arise from, but are not limited to, changing patterns of sidewalk and outdoor use, scheduled festivals or similar events, parades or marches, repairs to the street or sidewalk, or for any other reason.

(l) Furniture, equipment, and other amenities must be removed from the public sidewalk, dining area or parklet for extended periods of eating establishment closure (two weeks or more). The city may require removal during special events, scheduled festivals, parades or marches or similar events. Repairs to the street or sidewalk, or for any other reason.

(m) The city shall have the right, without notice or opportunity to be heard, to unilaterally remove unapproved exterior furniture and/or equipment from the outdoor dining space or parklet, and costs of removal shall be borne by the eating establishment.

(n) Applications for each sidewalk, outdoor dining or parklet for a new site must submit:

1. Description. A brief written description to include the name and address of the eating establishment, a description of the proposed sidewalk, outdoor dining space or parklet, the number of tables and seats, whether the eating establishments intends to serve alcohol, and whether water credits or water allocations are needed for the proposed permit.

2. Site Plan. For each application following the date of this ordinance, a plan, drawn to scale, showing the proposed sidewalk, outdoor dining space or parklet including all tables, seats, associated furniture, and barrier lines; the plan shall show all sidewalk clearance dimensions and elevations. Specifications shall be provided for any sidewalk heaters.
(3) Photos or Drawings. Color photos, renderings, and/or graphics shall show the setup, type of furniture, and materials to be used for all surfaces, including barrier lines or umbrellas.

(n) The zoning administrator is authorized to place or modify conditions under this section on sidewalk and outdoor dining adjacent to eating establishments to promote public health and/or safety, or to address unique site factors that apply to a specific location.

(o) Sidewalk, outdoor dining and parklet permits and/or encroachment permits issued under this section do not afford an exclusive right for use by the eating establishment or its patrons. The general public may make reasonable temporary use of the area and furniture at that location provided this public use does not interfere with the sidewalk dining use.

(p) Restoration requirements set by Section 6 shall apply upon expiration or revocation of the sidewalk, outdoor dining or parklet permit.

SECTION 4. Private Property Dining, and Parklet Program.

During the effective term of this ordinance, the provisions of PGMC section 23.70.030 (Staff Approvals) shall be suspended with respect to dining on private property – only – and in its place the requirements of Section 3, above, shall apply to outdoor dining on private property. Authorization of the property owner shall be required. All other applications of PGMC section 23.70.030 shall continue to have full force and effect.

SECTION 5. Modified Permit Processes and Fees.

The following City requirements shall apply to the Parklet Program during the effect of this ordinance:

a) Administrative Use permits shall be granted, without hearing or fee, to allow temporary outdoor dining on private property; the appeal process set in Table 23.70.012-1 shall nonetheless apply.

b) Encroachment permits shall be granted, without hearing or fee, to install or use parking spaces on a City street under the “Parklet Program.”

c) Sidewalk and outdoor dining encroachment permits shall be granted, without hearing or fee, to allow dining under the “Parklet Program.”

d) Reservation of parking spaces shall be allowed, without hearing or fee, to facilitate curbside pick-up for take-out service for businesses and restaurants.
SECTION 6. Restoration upon Revocation or Expiration of Any Sidewalk or Outdoor Dining Permit.

The Applicant for each sidewalk or outdoor dining permit, and the Owner or Operator of any business or eating establishment associated with that permit, shall be jointly and severally responsible to restore the sidewalk or outdoor dining area to pre-permit conditions upon revocation or expiration of the permit, or vacation of the dining or parklet area. If restoration is not completed in a timely manner, the City Manager may provide written notice to the owner of the property and/or the responsible person that the sidewalk, outdoor dining or parklet space requires remediation. The notice shall advise that, should the remediation fail to be completed within an established deadline, the remediation work may then be completed by the city or a contractor designated by the city, and the expense thereof shall be charged to the property owner pursuant to PGMC 9.30.310.

If the affected property is not restored within the time specified by notice, the City may cause remediation and recoup its expenses through processes set forth in PGMC sections 9.30.310, 9.30.320, 9.30.330, 9.30.340, or 9.30.360.

SECTION 7. Interpretation.

This Ordinance shall be liberally construed to implement its purposes.

SECTION 8. No Exemption from Water Permit Requirements.

This ordinance shall not exempt or modify any requirement that may otherwise exist for a property owner, occupant or business owner from their obligation to obtain and comply with MPWMD water permitting requirements that apply to any property use, including and not limited to indoor or outdoor dining activities.

SECTION 9. Temporary Suspension of Conflicting Requirements.

Any ordinance or provision of the Pacific Grove Municipal Code in conflict with this Urgency Measure shall be suspended for the effective period of this Ordinance.

SECTION 10. Further Direction.

The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 11. Enforcement

Violations of this ordinance may be prosecuted pursuant to Chapter 1.16 PGMC, and/or enforced pursuant to Chapter 1.19 PGMC.
SECTION 12. Severability.

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

SECTION 13. Effective Date.

In accord Article 15 of the City Charter, this ordinance shall take immediate effect upon adoption by a 5/7ths vote of the City Council.

SECTION 14. Expiration and Sunset.

Section 6 of this ordinance shall have continuing effect and not expire. All other provisions of this ordinance shall sunset one year following its enactment.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 21st day of April, 2021, by the following vote:

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

APPROVED

BILL PEAKE, Mayor

ATTEST: 4/26/2021
DATED:___________________________

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney