ORDINANCE NO. 21-010

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTER 2.04 OF THE PACIFIC GROVE MUNICIPAL CODE TO
CREATE EX PARTE CONTACT RULES

Findings

A. The City Council of Pacific Grove is committed to transparency in government and its
obligation to provide fair processes. The City of Pacific Grove (City) intends that its
adjudicatory and quasi-judicial decisions shall be made on information available to all
members of Council and members of the public.

B. At its regular meeting of February 17, 2021, Council directed preparation of draft ordinance
to amend the Pacific Grove Municipal Code (PGMC) to adopt rules and procedures to
govern ex parte contacts and disclosure requirements.

C. In considering ex parte requirements, the Council is aware of and has considered materials
promulgated by the League of California Cities addressing ex parte limits and disclosures
in the context of public hearings and also examined relevant polices and rules adopted by
other cities.

D. Notice of the public hearing on this measure was published on April 29, 2021.

E. This ordinance shall be codified upon enactment as an amendment of PGMC Chapter 2.04,
entitled “Council”.

F. In the enactment of this ordinance, the City followed the guidelines adopted by the State
of California and published in the California Code of Regulations, Title 14, Section 15000,
et seq., and found this activity to not be a Project defined by the California Environmental
Quality Act (CEQA) because it is an organizational or administrative activity that will not
result in direct or indirect physical changes in the environment; and

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

SECTION 1. Findings. The foregoing Findings are adopted as findings of the City Council as
though set forth fully within the body of this ordinance.

SECTION 2. A new section 2.04.090, entitled Ex Parte Communications, shall be added to Chapter
2.04 (Council) of Title 2 (Administration and City Government) of the Pacific Grove Municipal
Code, as follows:

2.04.090 Ex Parte Communications
(a) General Purpose. Constituents and members of the public have reasonable expectations allowing them to engage elected officials on matters of community concern that are often controversial such as land use matters. At the same time, interested persons also have a right to know factors a Council Member may consider related to making adjudicatory decisions. The purpose of this section is to clarify the nature and extent of rules, procedures and limits that apply to communications that occur on matters pending before, or are likely to come before, the City Council.

(b) Definitions. As used in this section, the following terms shall be given the definitions set forth below.

(1) Adjudicatory decisions. Adjudicatory decisions relate to evaluations or judgments where the City Council – acting in a judicial capacity – is charged with applying legal standards to a factual situation. These often arise in discretionary land use entitlement matters, personnel actions, appeals or other matters affecting vested rights or interests of named individuals or specific properties. Elements of due process are often mandated by law. Adjudicatory issues are at times characterized as quasi-judicial matters. Communications pertaining to adjudicatory decisions are subject to disclosure requirements by this section.

(2) Ex Parte. Ex parte is a Latin term that refers to unilateral contact made by one person or “party” without notice or knowledge of other persons or parties who may have an interest in the same matter. Ex parte contacts are substantive oral or written communications that occur outside of noticed meetings or hearings. Ex parte communications also include written materials that are not distributed to all Council Members or that are not otherwise included in the administrative record of the proceeding.

(3) General communications. General communications include materials that clearly indicate they have also been forwarded to the City Manager or City Clerk for inclusion in the public record; general communications are not ex parte communications and do not require disclosure by this section. Communications exclusively between Council members or between Council members and City staff, counsel or City-retained consultants are deemed do not require disclosure by this section. Information gained by Council members via their attendance at noticed public meetings before subordinate board and commissions does not require disclosure by this section.

(4) Legislative decisions. Legislative decisions relate to the City Council’s law-making, rulemaking and policy functions. These matters include enactment or promulgation of ordinances, zoning, general plan amendments, policies and procedures. These are at times characterized as quasi-legislative matters. Communication pertaining to legislative decisions do not require disclosure by this section.

(5) Pending Adjudicatory decisions. The term “pending” shall mean any adjudicatory or quasi-judicial matter that has been submitted to the City by way of application, variance, appeal or other process that will require decision by the City Council, but for which a final
decision has not yet been made. Matters are pending at the time an application has been filed.

(c) Contacts related to legislative matters. Members of the City Council may discuss pending or proposed decisions freely with constituents or the public. No disclosure or record of those contacts or communications is necessary.

(d) Contacts related to adjudicatory matters. Adjudicative decisions must be fair and enable interested parties to have meaningful opportunities to prepare and be heard. Undisclosed ex parte contacts by Council Members allow a perception that information may not be available to others, including interested parties. Appearances may suggest fairness is lacking, or a bias may exist.

This section allows Council Members to meet with constituents or members of the public to discuss pending adjudicative decisions but requires all Council Members make complete disclosures for each ex parte contact or communication. A contact or communication, and related disclosures, shall not be deemed grounds for disqualification unless the Council Member determines the nature of the contact is such that it is not possible for that Council Member to reach an impartial decision on the item.

The City Manager shall endeavor to identify tentative or regular agenda items that involve adjudicatory decisions, but failure to identify an item as such shall not affect the validity of actions taken by the City.

(e) Contacts related to mixed matters that include both adjudicatory and legislative decisions. At times a matter can involve a mixture of both adjudicatory and legislative decisions. For those matters, disclosures are required for each ex parte contact or communication.

(f) Ex parte disclosure requirements. Council members shall adhere to the following protocols for ex parte contacts or communications requiring disclosure by this section:

(1) Where information of a specific nature is received by a Council Member through contacts outside the record and the information is not already on the record, the member shall disclose the contact and its substance on the record prior to the commencement of the hearing to which such contact relates.

(2) No Council Member shall make, participate in making, or in any way attempt to use their official position to influence a City decision about which the member has knowingly had an ex parte contact or communication that has not been disclosed in accord with this section.

(3) Ex parte contacts after a hearing. Ex parte contacts or communications after a public hearing is closed and before a final decision is rendered are prohibited.

(g) Ex parte disclosure process. Identification of ex parte contacts or communications is intended to inform all members of Council, parties and public of information pertaining to the
City decision. Disclosures may be made orally or by written submission and shall ordinarily occur following staff presentation on the matter. Disclosures must include:

(1) identify the nature of the contact;

(2) identify the person(s) making the contact;

(3) briefly summarize substantive information conveyed; and

(4) provide copies of significant written materials.

Ex parte disclosures shall be made a part of the administrative record.

(h) No individual right of action. Nothing in this section shall be construed to create a remedy or right of action by a party or member of the public.

(i) Procedural protections. Nothing in this section shall be construed to limit any procedural protection a party or member of the public may be entitled to by law, based upon the facts and law that pertain to any specific proceeding.

SECTION 3. Implementation. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
THIS 5th day of May, 2021, by the following vote:

AYES: Mayor Peake, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.

NOES: None.

ABSENT: Councilmember Amelio.
APPROVED:

BILL PEAKE, Mayor

DATED: 5/10/2021

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney