

ORDINANCE NO. 24-005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADDING SECTION 2.04.110 TO THE PACIFIC GROVE MUNICIPAL CODE TO CODIFY THE PROVISIONS OF ARTICLE 21 OF THE CITY CHARTER

FACTS

1. The City of Pacific Grove is a charter city organized under the constitution of the State of California.
2. Pacific Grove became a charter city on April 22, 1927. New Charters were adopted in 1955, 1969, and 1974.
3. The Pacific Grove City Charter, in Article 21, currently provides as follows: “Neither the Council nor any of its committees or members shall dictate or attempt to dictate, either directly or indirectly, the appointment of any person to office or employment by the City Manager, or in any manner interfere with the City Manager or prevent the City Manager from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.”
4. The language of Article 21 has continuously appeared in the City Charter since the City’s first adopted Charter in 1927.
5. Article 21 allows direct contact with the administrative service for the purpose of inquiry. The purpose of Article 21 is to define the lines of authority within city government, not to prohibit protected speech. Interpreting Article 21 to prohibit "orders" to members of the administrative service is a bright line consistent with the purpose of Article 21 and the First Amendment. “Council members “are entitled to speak as they please on matters vital to them; errors in judgment ... may be exposed, of course, but not through punishment for contempt for the expression.” (See *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1262, quoting *Wood v. Georgia* (1962) 370 U.S. 375, 389.)
6. Council members have First Amendment protection when they comment individually, or respond to inquiries from the public, about the City's actions. Under the First Amendment, “legislators “are given the widest latitude to express their views” and there are no “stricter ‘free speech’ standards on [them] than on the general public.” (See *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1261, quoting *Eller Outdoor Advertising Co. v. Board of Supervisors* (1979) 89 Cal.App.3d 76, 80.)
7. The First Amendment to the United States Constitution provides as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

8. The California Public Records Act, in Government Code Section 7921.305(a), currently provides as follows: “Notwithstanding the definition of ‘member of the public’ in Section 7920.515, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.”

9. The California Public Records Act, in Government Code Section 7921.310, currently provides as follows: “Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency... shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.”

10. The Pacific Grove Municipal Code (PGMC), Title 2, Chapter 2.04 sets forth rules regarding Administration and City Government and addresses processes related to the City Council. The PGMC does not include a section addressing the inquiry authority of Council members, as provided under Article 21 of the City Charter.

11. Amending the Municipal Code to clarify the meaning of Article 21 and to authorize preparation of a city council policy establishing procedures and guidelines for submitting inquiries to members of the City’s administrative service is consistent with the City Charter, the California Public Records Act, the First Amendment, and related published case law; assists City elected officials in conducting oversight of the City Manager and City operations; and promotes clarity regarding Pacific Grove’s Council-Manager form of city government, as established under the City Charter.

12. This ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE 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. Amendment of Pacific Grove Municipal Code to Add Section 2.04.110

The following Section shall be added to the Pacific Grove Municipal Code:

Section 2.04.110 Inquiry

(a) The following definitions shall be used only to interpret the City Council's authority to make inquiries to the City's administrative service under Article 21 of the City Charter and shall control for the purposes of this Section:

(1) "The administrative service" means officers and employees of the City who are under the City Manager's direct supervision and control. Any inquiries regarding contract-related services shall be directed to the City Manager.

(2) "Inquiry" means a specific question from a member of the Council to a member of the administrative service which can be answered by furnishing information available from, or by providing, existing City records to the extent permitted by law, and which does not require a member of the administrative service to discuss or express an opinion concerning any existing or proposed policy of the Council, individual Council member(s), or the City Manager.

(3) "Orders" means commands, directions, or instructions to do something or not do something by a member of the Council, with or without an expectation that the individual will comply.

(b) Pursuant to Article 21 of the City Charter, except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.

(c) Pursuant to the California Public Records Act (CPRA), members of Council are entitled to access public records on the same basis as any other person. A response to an inquiry which requests a City record shall be subject to the provisions of the CPRA in regard to records to be produced and timelines for production. When Council and its members are authorized to access a City record, as permitted by law in the administration of their duties, the City shall not discriminate between or among any of those members as to which record or portion thereof is made available or when it is made available.

(d) An inquiry that communicates a grievance against the government of the City is protected by the First Amendment.

(e) Inquires may be responded to during normal business hours (excluding emergencies) in a manner consistent with the CPRA. If a council member does not receive a response to an inquiry from a member of the administrative service, nothing in this Code Section shall prevent the council member from

communicating with the City Manager concerning the inquiry, and nothing in this Code Section shall prevent the Council, acting as a body during a duly convened public meeting, from directing the City Manager to provide the outstanding information in response to the inquiry.

(f) The Council, acting as a body during a duly convened public meeting, may order the City Manager to furnish information or provide existing City records to the extent permitted by law, or direct the City Manager to create City records with the requested information to the extent permitted by law. Individual Council members may not make such orders of the City Manager.

(g) The authority of a Council member to make inquiries under Article 21 of the Charter is limited to inquiries made in their official capacity as an elected official. Nothing in this Section prohibits a Council member from contacting the City in the normal course of business in their private capacity.

(h) The City Manager and members of the administrative service are protected from retaliation that may result from an inquiry from a Council member to the extent provided under California law.

(i) The City Council may adopt a council policy for submitting inquiries to members of the administrative service provided such policy does not conflict or interfere with (1) the Pacific Grove Municipal Code, (2) the City Charter, (3) the California Public Records Act, or (4) the First Amendment, or any other local, state, or federal law.

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. Interpretation.

This Ordinance shall be liberally construed to implement its purposes.

SECTION 5. 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 6. Effective Date.

In accord with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

SECTION 7. No Sunset Date.

This ordinance shall have continuing effect and shall not expire.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 3rd day of April, 2024, by the following vote:

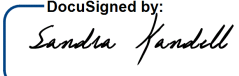
AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Beck, Coletti, and McDonnell.
NOES: Councilmembers Amelio and Poduri.
ABSENT: None.

APPROVED:

DocuSigned by:

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BILL PEAKE, Mayor

ATTEST: 4/10/2024
DATED: _____

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SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

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BRIAN A. PIERIK, City Attorney