

ORDINANCE NO. 25-001

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING PACIFIC GROVE MUNICIPAL CODE CHAPTER 15.16 “SIDEWALKS” TO ALLOW FOR ISSUANCE OF SIDEWALK DINING PERMITS

FACTS

1. On November 20, 2024, the City Council considered a draft Outdoor Dining Guidelines (“Guidelines”) and by Motion approved on a 7-0 vote the Guidelines, adding language that allows propane tanks to be used in accordance with fire and safety protocol, and allowing the City Manager discretion with respect to extension times when Outside Dining Areas are not in use pursuant to the required time.
2. Chapter 15.16 of the City Municipal Code “Sidewalks” does not currently have provisions allowing for the issuance of a Sidewalk Dining Permit.
3. The proposed Ordinance would amend Chapter 15.16 of the City Municipal Code “Sidewalks” to allow for the issuance of a Sidewalk Dining Permit.
4. Businesses which receive a Sidewalk Dining Permit will be required to comply with the conditions of the Permit and also comply with the Sidewalk Dining Guidelines (formerly known as Outdoor Dining Guidelines).
5. The City has determined that it is appropriate to adopt this Ordinance amending Chapter 15.16] to protect the health, safety and security of the public, and will ensure that all dining establishments operate fairly and safely.
6. Notice of the public hearing was published on February 13, 2025.
7. This Ordinance is in compliance with the California Environmental Quality Act (CEQA) for the following reasons:

Not a Project: Enactment of this ordinance action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) because it will not result in direct or indirect physical changes in the environment.

Even if the adoption of this Ordinance was a CEQA project, the Ordinance is exempt from CEQA as it falls under one or more of the following categorical exemptions:

- (1) Class 1 Categorical Exemption for Existing Facilities (CEQA Guidelines § 15301):
- (2) Class 3 Categorical Exemption for New Construction or Conversion of Small Structures (CEQA Guidelines § 15303):

- (3) Class 4 Categorical Exemption for Minor Alterations to Land (CEQA Guidelines § 15304):
- (4) Class 11 Categorical Exemption for Accessory Structures (CEQA Guidelines § 15311):

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

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

SECTION 2. Existing Municipal Code Chapter 15.16 “Sidewalks” is amended and shall read as shown in Exhibit A attached hereto and is hereby incorporated by reference as though set forth in full here. The added text to Chapter 15.16 is shown in underlining in Exhibit A.

SECTION 3. 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 its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 19th day of February, 2025 by the following vote:

AYES: Mayor Smith, Mayor Pro Tem Amelio, Councilmembers Garfield, McDonnell,
Poduri, Rau and Walkingstick.
NOES: None.
ABSENT: None.

APPROVED:

Signed by:

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NICK SMITH, Mayor

ATTEST: 3/3/2025
DATED: _____

DocuSigned by:
Sandra Kandell
4F11A61C850B4E1...

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Brian A. Pierik
01874FB17BD0435...

BRIAN A. PIERIK, City Attorney

EXHIBIT A

Chapter 15.16 SIDEWALKS

Sections:

15.16.010	Definitions.
15.16.020	Sidewalk width, curb lines established.
15.16.030	Repair procedure.
15.16.040	Sidewalk encroachment.
15.16.045	<i>Repealed.</i>
15.16.050	<i>Repealed.</i>
15.16.060	Curbs – Address numbers.
15.16.070	<u>Sidewalk Dining Permit Required for Placement of Sidewalk Dining Furniture</u>
15.16.080	<u>Sidewalk seating and sidewalk dining</u>
15.16.090	<u>Liability and Insurance</u>
15.16.100	<u>Fees</u>
15.16.110	<u>Duration of Encroachment Permits and Sidewalk Dining Permits</u>
15.16.120	<u>Display of Permit</u>
15.16.130	<u>Changes in Permit</u>
15.16.140	<u>Safety Provisions</u>
15.16.150	<u>Appeal of decision on Permit</u>
15.16.160	<u>Findings on Appeal</u>
15.16.170	<u>Suspension or revocation of Permit</u>
15.16.180	<u>Hearing on suspension or revocation of Permit</u>
15.16.190	<u>Administrative Review</u>
15.16.200	<u>Authority of Encroachment Officer</u>
15.16.210	<u>Penalties for Violation</u>
15.16.220	<u>Remedies Cumulative</u>

15.16.010 Definitions.

Except as otherwise provided, the following words shall have the meanings ascribed to them in this section:

(a) “Curb line” means the established line to which the edge of curb nearest the center of the street shall be constructed.

(b) “Encroachment” means any of the following:

(1) Any unmovable object that impedes the free flow of pedestrian traffic, and includes but is not limited to such things as walls, fences, hedges, trees, shrubbery or ground cover.

(2) Gravel, rocks, bark, wood chips or other loosely placed material susceptible to scattering beyond the area of initial placement.

(3) Sidewalk Dining furniture as defined in the Sidewalk Dining Guidelines as approved by the City Council Resolution.

(c) “Encroachment Officer” shall be the person or persons designated by the director of public works to issue permits as provided herein and to enforce the provisions of this Chapter who shall have the same enforcement authority as the enforcement officer referenced in City Municipal Code Section 1.19.020

(d) “Gutters” means the portion of roadway adjacent to the curbs.

(e) “Sidewalk Dining Guidelines” means the Sidewalk Dining Guidelines approved by Resolution of the City Council.

(e) Retaining wall” means any structure placed for the purpose of retaining earth.

(f) “Roadway” means the portion of street between the curb lines.

(g) “Sidewalk” means the graded or paved portion of the sidewalk space, and also includes curbing, retaining walls or other works for the protection of the sidewalk space.

(h) “Sidewalk Dining Furniture” means as defined in the Sidewalk Dining Guidelines.

(i) “Sidewalk Dining Permit” means the permit issued by the Encroachment Officer pursuant to this Chapter to allow for place of Sidewalk Dining Furniture on the Sidewalk.

(h) “Sidewalk space” means the portion of street between the property line and the nearest curb line. [Ord. 23-004 § 2 (Exh. A), 2023; Ord. 1827 N.S. § 1, 1992; Ord. 1697 N.S. § 1, 1989; Ord. 525 N.S., 1965; Ord. 210 N.S. § 5-201, 1952].

15.16.020 Sidewalk width, curb lines established.

The establishment of curb lines and the width of sidewalk space on all public streets shall be fixed by the city through the council. Installation and maintenance of sidewalks shall be in accordance with Council Policy 700-4, “Sidewalk Development.” [Ord. 23-004 § 2 (Exh. A), 2023; Ord. 18-007 § 2, 2018; Ord. 210 N.S. § 5-202, 1952].

15.16.030 Repair procedure.

Owners of property abutting sidewalks, or possessors of sidewalks, shall have the duty of maintaining the same and shall be subject to all of the liabilities and procedures prescribed by Chapter 22, Division 7, Part 3, commencing at Section 5600, of the Streets and Highways Code of the state of California. The Streets and Highways Code, Chapter 22, Maintenance of Sidewalks, provides that the owners of lots or portions of lots fronting any portion of the public street are responsible for maintaining sidewalks in a condition which will not interfere with the public convenience in their use. The city shall have all of the rights therein provided, including the right to lien and collection. No person except city employees, or persons under contract with the city, shall install or repair any curb, gutter, corner ramp, or sidewalk within or along any street in the city without having applied for and received an encroachment permit from the city. Utility encroachments shall also be subject to Chapter 15.30 PGMC. Application for any such permit will be made in writing on a form or forms supplied for that purpose by the city. [Ord. 23-004 § 2

(Exh. A), 2023; Ord. 19-002 § 3, 2019; Ord. 18-007 § 2, 2018; Ord. 877 N.S. § 1, 1975; Ord. 285 N.S., 1956; Ord. 210 N.S. § 5-203, 1952].

15.16.040 Sidewalk encroachment.

It is unlawful to construct, plant, or maintain any encroachment in a sidewalk space, except for city-sponsored amenities and activities, public utilities, mailboxes, bus shelters and benches and except for Sidewalk Dining Furniture as defined in the Sidewalk Dining Guidelines as approved by the City Council Resolution which shall be allowed subject to the issuance of an encroachment permit as provided in this Chapter. The Sidewalk Dining Guidelines are hereby incorporated by reference as if set forth in full here.

15.16.045 Sidewalk seating and sidewalk dining.

Repealed by Ord. 23-004. [Ord. 17-008 § 3, 2017; Ord. 16-004 § 3, 2016; Ord. 13-003 § 7, 2013].

15.16.050 Retaining wall construction.

Repealed by Ord. 23-004. [Ord. 525 N.S. § 3, 1965].

15.16.060 Curbs – Address numbers.

An owner of property may affix the property's address number to an abutting curb. [Ord. 23-004 § 2 (Exh. A), 2023; Ord. 96-17 § 1, 1996].

15.16.070 Permit Required for Sidewalk Dining Furniture

(a) Except as otherwise provided in this chapter, it is unlawful for any person to encroach or to make or to cause to be made any encroachment by placing Sidewalk Dining Furniture on a sidewalk without first having obtained Sidewalk Dining Permit from the director of public works or the building official or their designee.

(b) Sidewalk Dining Permits shall be issued by the Encroachment Officer upon such conditions the Encroachment Officer deems necessary to protect the public interest, health, safety or welfare.

(c) All obligations, responsibilities and other requirements of the permittee as described in this chapter shall be binding on subsequent owners of the encroachment.

(d) Any encroachment, including encroachments based upon placement of Sidewalk Dining Furniture on a sidewalk for which a permit is required and for which no permit has been issued pursuant to this chapter shall be deemed a public nuisance under Chapter 1.16 PGMC. [Ord. 23-004 § 2 (Exh. A), 2023].

(e) A violation of any conditions in an encroachment permit shall be deemed a public nuisance under Chapter 1.16 Pacific Grove Municipal Code

15.16.080 Sidewalk seating and sidewalk dining

The Encroachment Officer shall have the authority to allow, deny, or condition placement of Sidewalk Dining Furniture subject to the compliance by the eating establishment with the Sidewalk Dining Guidelines and following restrictions and conditions:

(a) Eating establishments, and all others, 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 for modification.

(b) Use of sound amplification on the exterior of an eating establishment is prohibited unless a permit therefor has been issued by the City

(c) Sidewalk dining and associated furniture as listed in subsection (a) of this section 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.

(d) 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 as required by Section 15.16.090 (Liability and Insurance) or as otherwise approved by the city attorney.

(e) Businesses placing Sidewalk Dining Furniture shall be responsible for keeping the furniture and immediately surrounding area clean and presentable at all times, and to this end shall promptly clean and remove all litter, spillage, and other materials.

(f) Approved Sidewalk Dining Permits allowing placement of Sidewalk Dining Furniture may be revoked by the Encroachment Officer at any time for violation of any of this provisions of the City Municipal Code, the Sidewalk Dining Guidelines and/or any conditions contained in the Sidewalk Dining Permit.

(g) Sidewalk Dining Permit 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 Enforcement Officer, to revoke, prohibit, or limit operation and use of a Sidewalk Dining Permit at any time by reason of anticipated, threatened, or actual problems or conflicts in the use for the sidewalk area. Such circumstances may arise from, but are not limited to, changing patterns of sidewalk use, scheduled festivals or similar events, parades or marches, repairs to the street or sidewalk, or for any other reason.

(h) Sidewalk Dining Furniture, equipment, and other amenities must be removed from the public sidewalk dining area for extended periods of eating establishment closure (two weeks or more). The city may require removal of the Sidewalk Dining Furniture during special events or for other reasons as determined appropriate by the Enforcement Officer. The city shall have the right to unilaterally remove unapproved Sidewalk Dining Furniture and/or equipment from the sidewalk dining space, and costs of removal shall be borne by the eating establishment.

(i) Sidewalk Dining furniture shall be constructed in the manner designated in the Sidewalk Dining Guidelines unless an alternative material is approved in advance by the Enforcement Officer.

(j) Each eating establishment may use umbrellas provided each shall maintain the seven-foot minimum sidewalk clearance for the entire height of the umbrella. The base weight of the umbrella shall be of appropriate size and design to avoid tipping over in the wind. Freestanding gas heaters shall not be utilized where umbrellas are present, for fire safety. Umbrellas shall not bear commercial logos.

(k) Each Sidewalk Dining Permit shall require payment of two fees: (1) the general encroachment permit fee (a one-time fee for placing Sidewalk Dining Furniture on the public sidewalk); and (2) an annual Sidewalk Dining fee associated with continued use of the public sidewalk. The city council shall set both fees by resolution in its master fee schedule.

(l) Applications for each Sidewalk Dining Permit for Sidewalk Dining must include:

(1) Description. A brief written description to include the name and address of the eating establishment, a description of the proposed sidewalk dining space, 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. A plan, drawn to scale, showing the proposed sidewalk dining space 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.

(4) A certificate of insurance for the applicant in a form satisfactory to the city confirming the insurance requirements of Section 15.16.090 have been satisfied;

(5) All other complete and descriptive information, including plans, specifications and analyses the city engineer may require describing the work and its effect on the right-of-way, including the mode of operation, maintenance and use;

(6) The written order or consent to work thereunder, where required by law, issued by any other public agency or body having jurisdiction.

(7) The application for a Sidewalk Dining Permit shall refer to, and incorporate by reference, all of the provisions of this chapter.

(8) A Sidewalk Dining Permit shall not be issued unless and until the order or consent required pursuant to this section is first obtained and filed with the Enforcement Officer . The permittee shall be knowledgeable and comply with all applicable federal, state and local laws, regulations and orders which may in any manner affect the permit. The permittee shall insure that its agents, employees and contractors are at all times in compliance with all applicable laws, regulations and orders.

(m) The Encroachment Officer is authorized to place or modify conditions in the Sidewalk Dining Permit to promote public health and/or safety, or to address unique site factors that apply to a specific location.

(n) Sidewalk Dining Permit issued under this Chapter 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.

(o) The eating establishment must comply with all of the provisions of this Chapter and the Sidewalk Dining Guidelines. In the event of conflict between any of the provisions of this Chapter and the Sidewalk Dining Guidelines, the provisions of this Chapter shall control.

15.16.090 Liability and Insurance

(a) The permittee shall be responsible for all liability imposed by law for personal injury or property damage proximately caused by: (1) work done by permittee under the permit, including work beyond the scope of the permit; (2) failure on permittee's part to perform obligations under the permit in respect to maintenance; or (3) the existence of any permitted encroachment. If any claim of such liability is made against the city, its officers or employees, permittee shall defend, indemnify and hold them, and each of them, harmless from such claim and liability insofar as permitted by law.

(b) Before a permit is issued, the applicant shall secure, at its expense, a policy of broad form commercial general liability insurance, on an "occurrence" basis issued by an insurer acceptable to the city. The policy shall by endorsement name the city and its officers, employees and agents as additional insureds and shall protect them from claims for personal injury, death or property damage suffered by third persons and arising out of the work performed pursuant to the permit or the manner of installation or construction. The insurance coverage afforded by this policy shall be primary. The policy shall include a cancellation clause requiring the issuing company or its authorized agent to provide a 30-day written notice of cancellation, suspension or modification, to the named certificate holder.

(c) The amount of liability insurance coverage shall be a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate or \$1,000,000 aggregate if the policy separately applies to the permitted project.

(d) Workers' compensation shall be maintained to meet minimum state requirements.

(e) The city manager may increase, decrease or waive the insurance limits set forth above in those cases in which he/she determines that special circumstances justify such an increase, decrease or waiver.

15.16.100 Fees

(a) All fees required to be paid under the provisions of this chapter shall be established by resolution of the city council and may be subject to adjustment based on the nature, scope and duration of the proposed encroachment.

(b) In addition to any fees required under this chapter, permittee shall be responsible for payment of any other fees that may be required under this code.

(c) Unless waived in writing by the city council, fees will be required of any public agency which is authorized by law to establish or maintain any works or facilities in, under or over any public street or right-of-way.

15.16..110 Duration of Encroachment Permits and Sidewalk Dining Permits

The issuance of an encroachment permit or a Sidewalk Dining Permit for a continuing encroachment shall, at the discretion of the Encroachment Officer be contingent upon the execution between the city and the permit applicant of an agreement providing for the use, operation, and maintenance of the encroachment. The agreement shall contain specific conditions for the use, operation and maintenance of the encroachment and/or Sidewalk Dining, insurance, and appropriate indemnification clauses to the benefit of the city. Any encroachment permit or Sidewalk

Dining Permit issued in conjunction with an agreement shall be valid only so long as the permittee is in compliance with the terms and conditions of that agreement.

15.16..120 Display of Permit

(a) A copy of any permit issued pursuant to this chapter shall be kept at the site and shall be shown to any authorized representative of the city on demand.

(b) An agreement or permit issued for continued use or maintenance of an encroachment or Sidewalk Dining involving the place of business of the permittee must be kept at the place of business, or otherwise safeguarded during the term of validity, and shall be made available to an authorized representative of the city within a reasonable time after demand therefor is made.

15.16..130 Changes in Permit

No changes may be made in the location, dimension, character or duration of the encroachment or Sidewalk Dining its mode of operation, maintenance, or use as granted by the permit except upon written authorization of the director of public works. All construction and use of materials must adhere to approved plans and specifications. The permittee shall coordinate all construction activities with the director of public works.

15.16..140 Safety Provisions:

Permittee shall at all times obey and enforce all applicable safety orders, rules and recommendations of the State Division of Industrial Safety and shall comply with all applicable state and local laws, ordinances, codes and regulations.

15.16..150 Appeal of decision on Permit

Any person aggrieved by the denial of a permit required by this chapter may appeal to the public works director or designee, by submitting a written appeal within 15 days of the date the application was denied or approved. The public works director or designee shall thereafter give written notice to the applicant and the appellee of a hearing to be held within 30 days of receipt of the appeal. The decision by the public works director or designee on the appeal shall be final.

15.16..160 Findings on appeal

The public works director or designee, or architectural review board where applicable, shall grant or deny the appeal if all of the following findings are made:

(a) Appeal by the Applicant from a denial of an Encroachment Permits or Sidewalk Dining Permits, that:

(1) the applicant has complied with all requirements of this Chapter;

(2) That no other reasonable method of obtaining the desired results is available except as proposed by applicant;

(3) That the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other property;

(4) That the granting of the permit will not adversely affect the safety, capacity, or integrity of the city's right-of-way;

(5) That an additional maintenance cost to the city is not created by the encroachment;

(6) That the granting of the permit will not be materially detrimental to the rights, interests or revenues of the city.

(7) That the environmental effects of granting the permit are not significant;

(b) Appeal by an aggrieved person or business of the approval of an Encroachment Permit or Sidewalk Dining Permit that:

(1) The applicant has not complied with all requirements of this Chapter;

(2) That there is other reasonable method of obtaining the desired results is available except as proposed by applicant;

(3) That the denial of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other property;

(4) That the granting of the permit will adversely affect the safety, capacity, or integrity of the city's right-of-way;

(5) That an additional maintenance cost to the city will be created by the encroachment or Sidewalk Dining;

(6) That the denial of the permit will not be materially detrimental to the rights, interests or revenues of the city.

(7) That the environmental effects of denial of the permit are not significant;

15.16.170 Suspension or revocation of permit

Any permit issued pursuant to this chapter may be suspended or revoked by the Encroachment Officer if any of the following are found to exist:

(a) The permittee has violated any provision of the City Municipal Code or the Sidewalk Dining Guidelines or any permit conditions or of any agreement entered into with the city related to the permit; or

(b) The permittee has failed to pay any required fees, or to post or maintain any bond or insurance required by this chapter; or

(c) The encroachment or Sidewalk Dining for which the permit was granted adversely affects the safety, capacity or integrity of the city's right-of-way; or

(d) The encroachment or Sidewalk Dining is causing the city to incur substantial additional maintenance costs; or

(e) Material misrepresentations were made in the application for the permit. [Ord. 23-004 § 2 (Exh. A), 2023].

15.16.180 Hearing on suspension or revocation of permit

The director of public works shall give the permittee at least 10 days' written notice of a hearing before the director of public works on the suspension or revocation of a permit issued pursuant to this chapter, setting forth the grounds for such action. The hearing shall be held within 30 days after service of written notice of the hearing. The decision of the director of public works shall be final.

15.16.190 Administrative review

In addition to any other remedies provided herein, violation of any provision of the City Municipal Code or the Sidewalk Dining Guidelines or any permit conditions shall be subject to an administrative fine or penalty as provided under Chapter 1.19 PGMC

15.16.200 Authority of encroachment officer

The Encroachment Officer and any inspectors acting on his/her behalf shall have authority to enforce any of the provisions set forth herein. In addition, for purposes of the administrative review of ordinance violations as provided in Chapter 1.16 PGMC, the Encroachment Officer and any inspectors acting on his/her behalf shall be included within the definition of "enforcement officer" in City Municipal Code Section 1.19.020 for purposes of issuing an administrative notice and order.

15.16.210 Penalties for violation

Any person violating any provision of this chapter, the City Municipal Code, the Sidewalk Dining Guidelines or any permit issued pursuant to this chapter, shall be guilty of a misdemeanor and upon conviction shall be punishable as set forth in Chapter 1.16 PGMC

15.16.220 Remedies cumulative

The remedies provided for in this chapter shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the city.