RESOLUTION NO. 20-040
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE
REPEALING AND REPLACING RESOLUTION 20-027
TO AMEND THE MUNICIPAL CODE
TO INCREASE THE TRANSACTIONS AND USE TAX

FACTS

1. The City of Pacific Grove (City) is a Charter City. As such, the City holds the power to make and enforce all ordinances and regulations about municipal affairs, including the conduct of City elections. (Cal Const art XI, §5(b).) California Constitution Article XI, §5(a), the “home rule” provision, affirmatively grants charter cities supremacy over “municipal affairs.”

2. On July 1, 2020, the Pacific Grove City Council adopted Resolution 20-027, enabling electors of the City of Pacific Grove to enact a ballot measure to increase the City’s sales tax and amend Pacific Grove Municipal Code (PGMC) Chapter 6.08, Uniform Sales and Use Tax.

3. Resolution 20-027 directed the Monterey County Elections Department to conduct an election on November 3, 2020 seeking approval of a tax measure proposal to increase the City’s 1% sales tax to 1.5% as a general tax.

4. Pursuant to Resolution 20-027, the tax measure (Measure L) was placed on the November 3, 2020 ballot; 5,368 voters (59.84%) cast “yes” ballots; 3,603 voters (40.16%) cast “no” ballots on that measure.

5. Resolution 20-027 referenced Measure L as effecting an increase to the City Uniform Sales and Use Tax by amending PGMC Chapter 6.08. This reference was in error. The correct effect of the Measure L was to enable an increase to the City Transaction and Use Tax by amending PGMC Chapter 6.07.

6. Resolution 20-027 included a severability clause whereby Council directed the Resolution should remain valid if any remaining portion of that Resolution should later be determined, for any circumstance or reason, to be invalid. While the severability clause specifically referenced acts by a court of competent jurisdiction, the City Council finds and determines that the severability clause must also affect and constrain acts of the City, and inform its options to construe the remaining validity and effect of the tax increase authorized by Measure L. The Council adopts this Resolution to partially revise invalid portions of Resolution 20-027 pertaining to PGMC Chapter 6.08 in order to respect and implement the will of the voters.

7. The City Council affirms its intent, and that of the majority of voters in the City who cast ballots on Measure L, to adopt a 0.5% increase to the City sales tax by causing
amendment of PGMC Chapter 6.07, Transactions and Use Tax. The effect of Measure L is thus to amend PGMC Chapter 6.07 and not to amend PGMC Chapter 6.08, Uniform Sales and Use Tax.

8. Insofar as the plain language of Measure L was to increase the City’s 1% tax rate to 1.5%, as a general tax, the City Council finds that the erroneous reference to amending PGMC Chapter 6.08 as opposed to amending PGMC Chapter 6.07 resulted in harmless error. The correct amendment of the PGMC is to increase to the City Transaction and Use Tax, and to not amend the City Uniform Sales and Use Tax.

9. This Council Resolution shall repeal and replace Resolution 20-027 in its entirety.

10. Enactment of this Resolution does not constitute a “project” under California Environmental Quality Act (CEQA) Section 15378 because it has no potential to result in physical change in the environment, directly or indirectly.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The additional Facts set forth in this Section are adopted as additional findings of the City Council:

1. The City Council determines and declares that financial circumstances of the City of Pacific Grove (City) require enactment of this measure to increase tax revenue to the City to preserve the public peace, health and safety of the community, to avoid work stoppage and/or service disruptions that shall result from additional staff cuts and reductions in force, and to avoid permanent impairment of community services provided by the police, museum, recreation and other cultural resources within the City.

2. Local governments in Monterey County are authorized to levy additional sales tax increments within their jurisdiction, subject to voter approval, with a total sales tax ceiling of 9.25%.

3. Neighboring cities of Carmel-by-the-Sea, Monterey, Seaside, Del Rey Oaks and Marina have already increased their respective sales tax rates to 9.25%.

4. Stagnant growth in City revenues and escalating operating costs from many causes, including factors related to COVID-19, constrain the City’s ability to maintain the quality of services provided and address its capital needs.

5. Without additional revenue, the City will be compelled to make spending reductions affecting programs and services that may jeopardize the public health, safety and general welfare of residents and visitors as well to curtail funding for maintenance, construction
and other improvements to City facilities and infrastructure. Reduced revenue also impairs the City’s ability to preserve the natural environment.

6. The City Council has determined a financial need exists that requires placement of a measure for a sales tax before the voters at the November 2020 general election.

7. This tax measure imposes an additional one-half percent (0.5%) Transaction and Use Tax (sales tax) for the privilege of selling tangible personal property at retail in the incorporated territory of the City. The tax revenue shall be collected by the California Department of Tax and Fee Administration and remitted to the City.

8. This sales tax measure shall be submitted to the voters as a general tax. The revenue generated shall be used for any legitimate governmental purpose. This measure does not commit revenue to any particular action or purpose. Uses of this revenue recited in the ballot measure are non-restricted and non-exclusive and are offered only as examples.

9. As a general tax, this sales tax measure shall be approved if the measure receives at least a simple majority of affirmative votes.

10. Pursuant to Elections Code Section 10002, the City may by resolution request the Board of Supervisors of Monterey County to permit the county elections official to render specified services to the City relating to the conduct of an election. The City shall reimburse the County in full for the services performed upon presentation of a bill to the City.

11. Pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections.

12. Pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election.
13. Enactment of this ordinance action does not constitute a “project” under California Environmental Quality Act (CEQA) Section 15378 because it has no potential to result in physical change in the environment, directly or indirectly.

SECTION 3. Resolution 20-027 is hereby repealed and replaced in its entirety.

SECTION 4. The City Council ordered, pursuant to Elections Code Section 10400 and 10403, an election be called and consolidated with any and all elections also called to be held on November 3, 2020.

SECTION 5. Pursuant to Elections Code Section 10002 the City Council requested the Board of Supervisors of the County of Monterey to permit the Monterey County Elections Department to provide any and all services necessary to conduct the November 3, 2020 election and agrees to pay for said services in full.

SECTION 6. The Monterey County Elections Department conducted the election on November 3, 2020 for the proposal to authorize amendment of Chapter 6.07 of the Pacific Grove Municipal Code in accord with the following question submitted to the electorate:

CITY MEASURE L

Shall the Pacific Grove Municipal Code be amended to increase the City of Pacific Grove’s current 1% sales tax to 1.5% as a general tax beginning January 1, 2021 to generate a long-term yield estimated at $1,000,000 annually, to fund capital needs; maintain public safety and emergency preparation; enhance the City’s infrastructure of parks, trails, beaches and trees; invest in community facilities and spaces; and provide general local City services, with all revenues requiring an annual independent audit?

Yes ( )
No ( )

Monterey County Elections website reports that the result of Measure L was that 5,368 voters (59.84%) cast “yes” ballots; 3,603 voters (40.16%) cast “no” ballots on that ballot measure.

SECTION 7. The voter approval requirement to enact the tax approved by this Measure L was a majority of voters casting ballots for the November 3, 2020 election. Because Measure L was approved by a majority of electors at that election, said Ordinance shall immediately amend Chapter 6.07 of the Pacific Grove Municipal Code as shown in this Resolution.

SECTION 8. The full text of Section 6.07 of the Pacific Grove Municipal Code, as approved by the electorate, shall be as follows:
Existing Municipal Code Section 6.07.050, entitled “Transactions and Use Tax - Rate,” shall be amended by the deletion of all text shown in strikeout text (strikeout text) and by the addition of all text shown in bold, italic underscore (bold italic underscore text), as to the following effect:

6.07.050  **Imposition of transactions tax – Rate.**
For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the city at the rate of one and one-half percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the city on and after the operative date of the ordinance codified in this chapter.

SECTION 9.  All tax proceeds deriving from the provisions of Chapter 6.07 shall be a general tax.  The revenue from Chapter 6.07 shall be placed into the City’s General Fund and be available for any and all municipal purposes.

SECTION 10.  The City Clerk shall publish a copy of this Resolution in a newspaper of general circulation once within fifteen (15) days after its adoption.

SECTION 11.  If any provision, section, paragraph, sentence, clause, or phrase of this measure, 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, or by this City, such decision shall not affect the validity of the remaining portions of this Resolution, or any part thereof, or its application to other persons or circumstances.

SECTION 12.  This resolution shall take effect immediately following passage and adoption.

**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 16th day of December, 2020, by the following vote:

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

APPROVED:

[Signature]
BILL PEAKE, Mayor
ATTEST: 12/21/2020
DATED: 

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney