



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Jocelyn Francis, Administrative Services Manager
MEETING DATE: May 18, 2016
SUBJECT: Second Reading of an Ordinance to Enact a Safe Sleeping Program
CEQA: Class 1 (Existing Facilities) exemption pursuant to California Environmental Quality Act (CEQA) Guidelines, section 15301. Permits for existing facilities involving negligible or no expansion of existing use.

RECOMMENDATION

Hold the second reading and pass an Ordinance amending Pacific Grove Municipal Code Chapter 18.36 to enact a Safe Sleeping Program.

BACKGROUND

At the May 4, 2016 Regular City Council Meeting, the City Council introduced the first reading of an Ordinance to Enact a Safe Sleeping Program.

DISCUSSION

Minor modifications to the proposed Ordinance included for second reading offer technical, non-substantive corrections that do not require a new first reading. A summary of the proposed ordinance, as approved by the City Attorney, was published in a newspaper of general circulation.

OPTIONS

1. Do nothing and allow the Safe Sleeping Pilot Program to expire.
2. Provide direction on substantive modifications to the draft ordinance.

FISCAL IMPACT

There are no foreseeable significant fiscal impacts. Costs associated with issuance of permits are provided by existing staff.

ATTACHMENT

1. Draft Safe Parking Program Ordinance

RESPECTFULLY SUBMITTED:

Jocelyn Francis
Administrative Services Manager

REVIEWED BY:

Ben Harvey
City Manager

ORDINANCE NO. 16 – _____

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
TO ENACT A SAFE SLEEPING PROGRAM THAT
MODIFIES MUNICIPAL CODE CHAPTER 18.36**

WHEREAS, in 1952, the City of Pacific Grove determined regulation of “house cars” was necessary and enacted Pacific Grove Municipal Code (PGMC) Chapter 18.36; and

WHEREAS, the City has a lack of adequate housing which results in a number of transient residents who are not able to sleep in locations without concern for their safety, health or welfare. The City is concerned with the need to safeguard private property, and at the same time provide opportunities for those in need to find safe and sanitary places to sleep on a short-term basis while they transition to more permanent housing; and

WHEREAS, the City desires to support a Safe Sleeping Program and manage a short term overnight parking program that will temporarily exempt a limited number of individuals from PGMC Chapter 18.36.050 “Temporarily sleeping in a parked vehicle by permit only.” This Program shall be limited by time, number of vehicles, location and other terms and conditions, and shall allow people to sleep overnight in a parked vehicle only by permit; and

WHEREAS, the Safe Sleeping Program shall be undertaken in coordination with the provision of social services and case management for individuals who participate, the goal of which is to provide stability for vehicle dwellers and enable them to make positive changes in their lives to enhance their employment and housing circumstances as quickly as possible; and

WHEREAS, the action allows short term permits of existing facilities that involve only negligible or no expansion of existing use. As such, this ordinance qualifies for a Class 1 (Existing Facilities) exemption as defined by California Environmental Quality Act (CEQA) Guidelines section 15301.

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

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

SECTION 2. For the period beginning with the enactment of this ordinance, the provisions of Chapter 18.36 of the Pacific Grove Municipal Code shall be modified as shown in Sections 3 of this ordinance.

SECTION 3. The text set forth in this section shall be added as a new section 18.36.050 of the Pacific Grove Municipal Code, entitled “Temporarily sleeping in a parked vehicle,” as follows:

18.36.050 - Temporarily sleeping in a parked vehicle by permit only.

A Safe Sleeping Pilot Program shall exist in the City in accord with this Ordinance. The City Manager, Chief of Police, or designee shall have the authority to issue or deny Safe Sleeping Program Site Permits pursuant to the following conditions:

- (a) **Maximum Number of Permits.** The maximum aggregate number of vehicles that may be permitted at any one time throughout the City pursuant to the Safe Sleeping Program ordinance shall be seven.
- (b) **Vehicle Definition.** Under this section, the term “vehicle” is defined as a passenger car, passenger truck, house car, recreational vehicle, or motor home. Buses and commercial vehicles shall not qualify as a vehicle.
- (c) **Site Registration.** Each property owner eligible to participate in the Safe Sleeping Program shall register the site with the City and obtain a Safe Sleeping Program Site Permit, prior to allowing any person to park or sleep in a parked vehicle overnight. This site shall also be referenced in this section as the “Premises.”
- (d) **Site Locations Qualified for Permits under the Program.** The location upon which a permit may be issued shall be a parking lot of a religious institution, place of worship, business, or public entity that owns or leases property on which an existing hardscaped parking lot and occupied structure are located.
- (e) **Site Registration Application.** Each Site registration application shall include the following:
 - (1) Written assurance the property owner shall be individually responsible to ensure all requirements of this ordinance and the Safe Sleeping Program Site Permit are met;
 - (2) The property owner has sole and exclusive control of the parking area to be used as the Safe Sleeping Program Site;
 - (3) A site plan that shows the location of trash and recycling bins, the location of restroom facilities, the parking plan and any lighting or security facilities;
 - (4) On site sanitary and trash facilities shall be available to each temporary vehicle occupant, in compliance with law and applicable building and health codes;
 - (5) The property owner is responsible for any wastewater, sewage, or waste material discharge onto or deposited upon the surface of the ground or parking area, whether as a result of leaks from plumbing fixtures, wastewater, sewage, or waste material discharge, or any other material deposited upon the surface of the ground or parking areas by an occupant of a parked vehicle on that site;
 - (6) The property owner shall remove any wastewater, sewage, or waste material discharged onto the ground or parking areas, in a manner consistent with the requirements of law, and in consultation with the County health department;
 - (7) The property owner shall provide garbage and refuse disposal services as required by PGMC Chapter 9.16, Garbage and Refuse Disposal, as may be amended from time to time;
 - (8) The property owner shall provide or ensure adequate site supervision. Site supervision shall include, at a minimum, providing an on-call “on site monitor” to

ensure vehicles and occupants do not arrive before 7:00 p.m. and leave by 7:30 a.m. The monitor shall also respond to neighbor, community or city inquiries. Any on-call monitor must be able to be physically present on site within 30 minutes of request at any time the property is occupied. Within 24 hours of receiving any request for corrective action, the on-site monitor shall use his/her best efforts to remedy the circumstance.

- (9) The property owner shall be responsible for any cost related to the towing of vehicles, removal of debris, remediating environmental violations, and/or any civil or criminal remedies related to use of a Temporary Vehicle Occupancy Permit;
 - (10) The property owner shall not accept payment of any fee, rent, or monetary charge for overnight sleeping in connection with the use of a Temporary Vehicle Occupancy Permit;
 - (11) Acknowledgment the City has not participated in selection of, and does not provide supervision for, any temporary vehicle occupant. The property owner shall nonetheless provide written assurance he/she shall not impermissibly discriminate in the selection of temporary vehicle occupants for any reason, including race, color or creed.
- (f) Temporary Vehicle Occupancy Permits. Each vehicle eligible to participate in the Safe Sleeping Program shall be registered and shall possess and prominently display a Temporary Vehicle Occupancy Permit in the vehicle windshield, before any person shall be allowed to park or sleep in a parked vehicle overnight.
- (1) Occupancy Limited. Guests shall not be allowed. Vehicles may be occupied only by approved occupants and one occupant must have a valid driver's license. Occupants shall not exceed the occupant capacity for vehicle to be lawfully driven on a public roadway/highway.
 - (2) Vehicle Requirements. Each vehicle shall be operable and properly registered with valid vehicle insurance, in accord with state and local law. Only one vehicle shall be allowed under each Temporary Vehicle Occupancy Permit.
 - (3) Times. Each vehicle shall remain off the Premises between the hours of 7:30 a.m. and 7:00 p.m., each day. Strict adherence to these "in and out" times is mandatory.
 - (4) Indemnification. Each vehicle occupant member who stays in a vehicle under a Temporary Vehicle Occupancy Permit shall sign an indemnification and waiver form, as prepared by the City, to indemnify the City and waive any claim or cause of action against the City, including relocation benefits.
 - (5) Permit Issued by Property Owner. The Temporary Vehicle Occupancy Permit shall only be issued by a property owner that has currently registered the site pursuant to this section to allow a named person or named persons to temporarily sleep overnight in a vehicle on that specific property, and must be issued on a form approved by the City.
 - (6) Expiration of Vehicle Permit. Each Temporary Vehicle Occupancy Permit shall expire 30 days from the date of its issuance. Thereafter, permits may be renewed at the sole discretion of the property owner. Any Temporary Vehicle Occupancy Permit issued under this ordinance shall immediately terminate, and thereafter be

null and void, upon expiration or revocation of the Vehicle Occupancy Site Permit.

- (7) Compatible Use. Overnight sleeping pursuant to a Temporary Vehicle Occupancy permit shall not be allowed in any instance where the city finds this activity incompatible with uses of adjacent properties or constitutes a nuisance or other otherwise threatens the public welfare.
 - (8) Minor Supervision. Close supervision of minor children shall be required at all times.
 - (9) Drug Use. No drugs (excepting those possessed and used in accord with a proper prescription) and no alcohol may be consumed or contained in or within 50 feet of any vehicle subject to a Temporary Vehicle Occupancy Permit.
 - (10) Firearms. No weapons or firearms of any kind may be contained in the vehicle. (excepting those possessed in accord with state and federal law);
 - (11) Fires. No fires or open flame of any kind is allowed outside the vehicle. No cooking or food preparation shall be performed outside the vehicle.
 - (12) Utilities. No extension of electrical or water service shall be allowed from any structure to any vehicle.
 - (13) Noise. No person shall make any noise or sound using a radio or other amplification device, in association with the Temporary Vehicle Occupancy Permit that as specified in PGMC §11.94 and §11.96. Amplified music or other sounds shall not be played if audible outside the vehicle.
 - (14) Pets. Pets on Premises shall be kept on a leash at all times. Animal waste shall be picked up immediately and disposed of properly. Vehicle occupants shall keep barking dogs in their vehicles. Any dog or other animal demonstrating aggressive behavior shall be immediately removed from the Premises.
 - (15) Parking Location. During overnight use, each vehicle shall be sited on the Premises not less than fifty feet away from any real property used for residential purposes.
 - (16) Property. No person shall use, store, or place outside the vehicle any items of personal property owned or used by the temporary vehicle occupant, unless stored within a pre-existing authorized structure on site.
 - (17) Commercial Use. No vehicle shall be used for any office, retail or any other commercial purpose.
 - (18) Urination and/or Defaction. Urination and/or defecation outside of authorized restroom facilities is prohibited.
 - (19) Camping. Camping tarps are prohibited.
 - (20) Each vehicle and occupant participating in the Safe Sleeping Pilot Program pursuant to a Temporary Vehicle Occupancy permit shall also comply with administrative rules adopted and promulgated by the City Manager for orderly implementation of this ordinance.
- (g) Permit Revocation. The Safe Sleeping Program Site Permit may be revoked by the City Manager, Chief of Police, or designee in accord with this ordinance. Any property owner who receives a Safe Sleeping Program Site Permit to allow persons to sleep in a parked vehicle on that property shall immediately surrender that permit upon request of the City Manager, Chief of Police, or designee. Occupants sleeping in a parked vehicle, and the

vehicle, shall immediately leave the property after the Safe Sleeping Program Site Permit is revoked.

- (1) Revocation Due to Violation of Law or Permit. The City Manager, Chief of Police, or designee shall revoke any Temporary Vehicle Occupancy Permit upon finding any occupant of that vehicle has violated any provision of law or ordinance, including non-compliance with any term, condition, restriction and/or requirement of the Temporary Vehicle Occupancy Permit or Safe Sleeping Program.
 - (2) Revocation Due to Inadequate Site Monitoring. The City Manager, Chief of Police, or their designee shall revoke any Temporary Vehicle Occupancy Permit and/or any Safe Sleeping Program Site Permit upon finding the on-site monitor fails to fulfill any requirement required by this section.
 - (3) Revocation Due to Failure to Enforce Rules. The City Manager, Chief of Police, or their designee shall revoke any Temporary Vehicle Occupancy Permit and/or Safe Sleeping Program Site Permit upon finding the property owner has failed to provide or has withdrawn any term, condition or assurance required by this ordinance, or given in connection with the application for a Safe Sleeping Program Site Permit .
 - (4) Revocation Due to Withdrawal of Permission. The City Manager, Chief of Police, or their designee shall revoke any Temporary Vehicle Occupancy Permit upon finding the property owner withdraws permission to use the Premises for the purposes of this Safe Sleeping Pilot Program.
 - (5) No Notice Required. Any Temporary Vehicle Occupancy Permit or Safe Sleeping Program Site Permit may be summarily revoked pursuant to this section. Advance notice shall not be required.
 - (6) Duty upon Revocation of Permit. Any person who for any reason lacks permission or a valid Temporary Vehicle Occupancy Permit to remain on property as provided in this section, shall vacate and leave the property immediately upon being informed that permission was rescinded or the Permit was revoked.
- (h) Enforcement. The City Manager or designee shall enforce this ordinance, and may impose administrative civil penalties on property owners or temporary vehicle occupants who fail to comply with requirements of this chapter, as provided in PGMC Chapter 1.19.
- (i) No Duty Imposed on Property Owner to Allow Parking. Neither this ordinance nor the grant of any permit pursuant to this ordinance shall be construed to impose a duty on any property owner who chooses to allow temporary overnight sleeping in a vehicle, as authorized by this ordinance, to continue to allow such use of the Premises. The property owner may elect to revoke permission to use the Premises for temporary overnight sleeping purposes, at any time, with or without cause.
- (j) Duty on Property Owner Imposed to Comply with Program Terms. This ordinance shall impose a duty on any property owner who receives a Safe Sleeping Program Site Permit or who allows temporary overnight sleeping in a vehicle to cooperate in the enforcement of this ordinance and of each term, condition or assurance required by or given in

connection with the application for a Safe Sleeping Program Site Permit. Within 24 hours of receiving any request for corrective action, the property owner shall assist the on-site monitor to use his/her best efforts to remedy the circumstance.

- (k) Hold Harmless and Non-Responsibility. Nothing in this ordinance creates any duty on the part of the City to ensure protection of persons or property relating to the grant of any Safe Sleeping Program Site Permit or use of any Temporary Vehicle Occupancy Permit. Nothing in this section or this code creates any liability on the part of the City or its agents relating to the grant, denial or revocation of any Safe Sleeping Program Site Permit or Temporary Vehicle Occupancy Permit.

SECTION 4. Implementation Actions.

The City Manager and City Clerk are directed to execute all documents and to perform all other necessary City acts to implement this ordinance.

SECTION 5. Effective Date.

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

SECTION 6. 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.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this ___ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney