

**ORDINANCE NO. 16-023**

**ORDINANCE OF THE CITY OF PACIFIC GROVE  
ADOPTING CHAPTER 1.18 OF THE PACIFIC  
GROVE MUNICIPAL CODE PROVIDING MOTOR  
VEHICLE PARKING VIOLATION ENFORCEMENT**

**FINDINGS**

1. The City Council of the City of Pacific Grove (City) seeks to implement motor vehicle parking violation enforcement through the creation of an expedited, streamlined hearing process that complies with the California Vehicle Code; and
2. The City's Charter Article 4 and Article 45 grant authority to the City Council to exercise all powers necessary or appropriate to a municipal corporation and may establish an administrative remedy process to enforce the City Charter and Municipal Code; and
3. Section 1.16.010(d) of the City's Municipal Code requires enforcement of motor vehicle parking violations to comply with the California Vehicle Code; and
4. This ordinance codifies the City's administrative review power over any motor vehicle parking violation enforcement action or proceeding within the City limits; and
5. This ordinance establishes administrative hearing procedures to provide all individuals charged with a parking violation a forum in which the facts of their case may be reviewed fairly, a disposition rendered in a timely manner, and for collection of fines; and
6. Enactment of this ordinance action does not constitute a "project" as defined by 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.

**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. The City of Pacific Grove hereby adopts Chapter 1.18 "MOTOR VEHICLE PARKING VIOLATION ENFORCEMENT." This chapter shall read as follows:

**CHAPTER 1.18 - MOTOR VEHICLE PARKING VIOLATION ENFORCEMENT**

1.18.010 – Purpose.

1.18.020 – Definitions.

1.18.030 – Service of citations, orders and notices.

- 1.18.040 – Citation issuance.
- 1.18.050 – Parking fines.
- 1.18.060 – Delinquent parking violations.
- 1.18.070 – Advance deposit hardship waiver.
- 1.18.080 – Hearing request- Initial review.
- 1.18.090 – Hearing request- Administrative hearing.
- 1.18.100 – Administrative hearing officer selection.
- 1.18.110 – Administrative hearing procedure.
- 1.18.120 – Hearing officer’s decision.
- 1.18.130 – Judicial review.
- 1.18.140 – Collection of unpaid citations.
- 1.18.150 – Preemption.

**1.18.010 – Purpose.**

This chapter sets forth authority for enforcement of parking violations to preserve and protect the quality of life in the City of Pacific Grove. This chapter further establishes administrative hearing procedures to provide all individuals charged with a parking violation a forum in which the facts of their case may be reviewed fairly, a disposition rendered in a timely manner, and for collection of fines.

**1.18.020 – Definitions.**

For the purpose of this chapter, the following words and phrases are defined:

(a) “Enforcement officer” shall mean and refer to any employee or agent of the city holding authority to enforce violations of this code or an ordinance. This shall include the chief of police, and any person designated as an enforcement officer by the chief of police.

(b) “Park” shall mean to stand or leave standing any vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of passengers or materials.

(c) “Processing agency” shall mean and refer to the contracting party responsible for the processing of the notices of parking violations and notices of delinquent parking violations.

**1.18.030 – Service of citations, orders and notices.**

All citations, orders and notices shall be served in accordance with the provisions of Chapter 1.12 PGMC and California Vehicle Code §40202.

**1.18.040 – Citation Issuance.**

Whenever an enforcement officer determines a violation of parking statute or ordinance has occurred, the enforcement officer shall be authorized to issue a parking citation to any person responsible for the violation in accord with California Vehicle Code §40202.

**1.18.050 – Parking fines.**

(a) The fines for each parking violation and administrative fees imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the city council. In the absence of a designated fine, the default fine for each violation shall be \$50.00.

(b) Any parking citation fine paid pursuant to this section shall be refunded in accordance with PGMC 1.18.120 if it is determined that, after a hearing, the person charged in the parking citation was not responsible for the violation or that there was no violation as charged in the parking citation.

**1.18.060 – Delinquent parking violation.**

(a) The notice of delinquent violation shall be issued to the registered vehicle owner if the person fails to pay to the city the parking fine by the date fixed on the notice of parking violation. This notice shall be issued in accordance with PGMC 1.18.030.

(b) Whenever the amount of any parking fine or penalty has not been satisfied within the due date of the delinquent notice or the parking citation has not been successfully challenged pursuant to this chapter, this obligation may be collected in accordance with PGMC 1.18.140.

**1.18.070 – Advance deposit hardship waiver.**

Any person who intends to request a hearing to contest whether the parking violation occurred, or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in PGMC 1.18.050, may file a request for an advance deposit hardship waiver in accord with California Vehicle Code §40215(b).

**1.18.080 – Hearing request- Initial review.**

(a) Any recipient of a notice of parking violation or a notice of delinquent parking violation may request an initial review of the notice by the city. A person may request an initial review of the notice of parking violation for a period of twenty-one (21) calendar days from the issuance of a notice of parking violation or fourteen (14) calendar days from the mailing of a notice of delinquent parking violation. The request may be made by telephone, in writing, or in person in accord with California Vehicle Code 40215(a). There shall be no charge for this review.

(b) If the city is satisfied that 1) the violation did not occur, 2) the registered owner was not responsible for the violation, or 3) extenuating circumstances make dismissal of the citation appropriate in the interest of justice, the city shall cancel the notice of parking violation or notice of delinquent parking violation. The city shall advise the processing agency, if any, of the cancellation.

(c) If the city upholds the notice of parking violation or notice of delinquent parking violation, the city shall include:

- (1) A reason for that denial;
- (2) Notification of the ability to request an administrative hearing; and
- (3) Notification of the procedure for waiving prepayment of the parking penalty based upon an inability to pay pursuant to PGMC 1.18.070.

(d) The city shall mail the results of the initial review to the person contesting the notice in accordance with PGMC 1.18.030.

#### **1.18.090 – Hearing request- Administrative hearing.**

(a) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than twenty-one (21) calendar days following the mailing of the results of the city's initial review in accord with California Vehicle Code §40215(b).

(b) The person requesting the hearing shall deposit the fine in advance, in accordance with PGMC 1.18.050, or shall receive in advance a deposit hardship waiver in accordance with PGMC 1.18.070.

(c) A hearing before the hearing officer shall be set for a date no later than ninety (90) calendar days following the receipt of a request for an administrative hearing. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing. The person requesting the hearing may request one continuance, not to exceed twenty-one (21) calendar days.

(d) If the enforcement officer submits any additional written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of this report shall be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

#### **1.18.100 – Administrative hearing officer selection**

The presiding officer of the hearing officer panel shall, by random lot, designate one of the members of the hearing officer panel to be the hearing officer for each administrative hearing. Should that hearing officer be disqualified for cause, or should that hearing officer otherwise be unable to conduct the hearing, the presiding officer shall, by random lot, designate a successor hearing officer from available members of the hearing officer panel.

#### **1.18.110 – Administrative hearing procedure.**

The administrative hearing process shall consist of the following:

- (a) The person requesting an administrative hearing shall indicate to the city whether the administrative hearing will be in writing or in person.
- (b) If the person requesting an administrative hearing is a minor, that person shall be permitted to appear at the hearing or admit responsibility for a parking violation without the necessity of the appointment of a guardian.
- (c) The failure of any recipient of a parking citation to appear at the administrative hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- (d) The parking citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (e) The enforcement officer who issued the notice of parking violation shall not be required to participate in the administrative hearing. No evidence shall be required other than the notice of parking violation or copy, and information received from the DMV identifying the registered owner of the vehicle. The enforcement officer may, but is not required to, submit additional report he or she deems necessary or appropriate.
- (f) The hearing officer may question witnesses and request additional information from the enforcement officer or the recipient of the administrative citation prior to closing the hearing.

**1.18.120 – Hearing officer’s decision.**

- (a) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the citation and shall list the reasons for that decision. The decision of the hearing officer shall be final for purposes of administrative review.
- (b) If the hearing officer determines that the citation should be upheld, then the fine amount on deposit with the city shall be retained by the city. If the fine has not been deposited, the hearing officer shall set forth in the decision a payment schedule for the fine.
- (c) If the hearing officer determines that the citation should be canceled and the fine was deposited with the city, then the city shall promptly refund the amount of the deposited fine, together with interest. If the fine has not been deposited, the hearing officer shall cancel the obligation to tender the fine.
- (d) The hearing officer’s decision shall be personally served or served by first class mail. A copy of the decision shall be forwarded to all members of the hearing officer panel.

**1.18.130 – Judicial review.**

- (a) Any person aggrieved by an administrative hearing officer’s final decision may obtain review by filing an appeal to be heard by the superior court.

(b) California Vehicle Code Section 40230 shall be applicable so as to provide a thirty (30) day limitation for judicial review of any parking enforcement decision.

(c) A copy of the notice of parking violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of parking violation shall be admitted into evidence as prima facie evidence of the facts stated therein.

(d) The person shall pay the filing fees as prescribed by the court. If the court finds in favor of the person, the amount of the filing fees shall be reimbursed to the person by the city. Any deposit of parking penalty shall be refunded by the city in accordance with the judgment of the court.

(e) If no notice of appeal of the hearing officer's decision is filed within the period set forth in PGMC 1.18.130(a), the decision shall be deemed final.

#### **1.18.140 – Collection of unpaid citations.**

Whenever the amount of any administrative fine, penalty and/or administrative cost imposed by a hearing officer pursuant to this chapter has not been satisfied, the city shall commence collection proceedings. The city shall proceed with options set forth in the California Vehicle Code Section 40200 et seq. as may be amended for the collection of unpaid parking citations.

#### **1.18.150 – Preemption.**

This chapter shall not be interpreted in any manner that conflicts with the laws or the Constitutions of the United States or of the state of California.

SECTION 3. The text set forth in existing Section 1.16.010 of the Pacific Grove Municipal Code entitled, "Enforcement – Misdemeanors," of Chapter 1.16, Violations, shall be amended by the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

#### **1.16.010 – Enforcement – Misdemeanors.**

(a) Subject to subsection (d) of this section, every act prohibited or declared unlawful and every failure to perform an act required by this code is a misdemeanor, except in cases in which the act or failure to perform an act is expressly stated to be an infraction; provided, that the city attorney may elect to prosecute any misdemeanor as an infraction.

(b) A misdemeanor is punishable by a fine of no more than \$1,000 or by imprisonment for no longer than six months, or by both such fine and imprisonment, unless this code otherwise specially provides.

(c) Any person causing or permitting a violation of this code shall be regarded as committing a separate offense on each day that the violation occurs or continues.

(d) Violations of provisions of this code regulating and prohibiting the standing and parking of motor vehicles shall be treated and processed pursuant to California Vehicle Code Section 40200 et seq. as adopted in Chapter 1.18 PGMC, Motor Vehicle Parking Violation Enforcement.

SECTION 4. In accord with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following passage and adoption hereof.

SECTION 5. The City Manager, Chief of Police and City Clerk are directed to perform all tasks necessary to implement this ordinance. This measure may, but shall not be required to, cause republication of the Pacific Grove Municipal Code.

SECTION 6. 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.

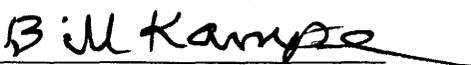
**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF  
PACIFIC GROVE this 21<sup>st</sup> day of December, 2016, by the following vote:**

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Huitt, Peake and Smith.

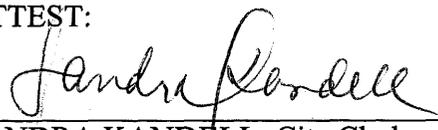
NOES: None.

ABSENT: Councilmember Garfield.

APPROVED:

  
BILL KAMPE, Mayor

ATTEST:

  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

  
DAVID C. LAREDO, City Attorney