

ORDINANCE NO. 17-010

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTERS 10.08, 10.10 AND SECTION 10.04.190 REGARDING
ABATEMENT OF VICIOUS DOGS AND SECTION 14.08.030 OF THE
PACIFIC GROVE MUNICIPAL CODE REGARDING ANIMAL KEEPING AND
FEEDING AND DOGS IN PUBLIC PARKS**

WHEREAS, the City Council of the City of Pacific Grove (City) regulates the keeping and feeding of animals within City limits to protect property owners, pet and animal owners, and the public;

WHEREAS, City staff conducted a comprehensive review of the City's Municipal Code provisions, and determined revisions are necessary to clarify the permitting requirements, allocate responsibilities for feeding or harboring animals, and streamline the process for enforcement, hearings and appeals;

WHEREAS, the City also seeks to institute an appeal and hearing process for these regulations consistent with the existing administrative hearing process;

WHEREAS, this ordinance amends Chapter 10.08 of the Municipal Code to address the keeping of "non-household animals" within City limits, and clarify responsibilities to maintain conditions that will not present a public or private nuisance;

WHEREAS, this ordinance amends Chapter 10.10 of the Municipal Code relating to the keeping and feeding of animals, with specific limitations and responsibilities to promote a safe and healthy environment for residents, visitors and animals;

WHEREAS, this ordinance amends Section 10.04.190 of the Municipal Code pertaining to the abatement of vicious dogs, and redirects the hearing process to the City's administrative hearing panel under PGMC §1.19;

WHEREAS, this ordinance amends Section 14.08.030 to permit dogs on leash in Lovers Point Park (excluding the beach and grass areas), Berwick Park, George Washington Park and the Southern Pacific Railroad right-of-way and specifies dogs are allowed off-leash Lynn "Rip" Van Winkle Park from sunrise to sunset;

WHEREAS, Notice of the public hearing was published or posted on June 1, 2017;

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

WHEREAS, enactment of this Ordinance qualifies for a CEQA Class 3 Categorical Exemption as provided by section 15308 of the CEQA Guidelines as it is an action to assure them maintenance, restoration, enhancement, or protection of 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 text set forth in existing Chapter 10.08 of the Pacific Grove Municipal Code entitled, "Keeping Animals and Fowl" shall be amended by the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), deletion by ~~striketrough~~ as follows:

**Chapter 10.08
KEEPING ANIMALS AND FOWL**

Sections:

- 10.08.010 Restrictions generally.**
- 10.08.020 Animals allowed without permit.**
- 10.08.030 Permit – Required for certain animals.**
- 10.08.040 Permit – Conditions – Revocation or modification.**
- 10.08.050 Regulations for keeping.**
- 10.08.060 Prosecutions.**
- 10.08.070 Enforcement.**

10.08.010 Restrictions generally.

*(a) It is unlawful to keep, harbor or maintain within the city limits any cow, horse, mule, donkey, sheep, goat, fowl or any domestic or wild animal **any non-household animal, which includes but is not limited to horses, cows, sheep, goats, pigs, gulls, raccoons, deer, squirrels, geese, and any other domestic, domesticated, exotic or wild animal, other than those usually and ordinarily kept as household pets, and** except as permitted by this Chapter. **Non-household animals include any animal prohibited by Cal. Code Regs. Title 14, §671 and §671.1.***

(b) Property owner and occupant shall maintain property in a condition that does not keep, harbor or maintain non-household animals on rooftops or the exterior of any building or structure.

(c) Properties and structures shall be maintained free of animal waste on any exterior surfaces of buildings and structures, including adjacent sidewalk areas. Property owners and occupants shall employ elimination methods in accordance with PGMC §9.30.130. Accumulation of animal waste shall constitute a public nuisance in violation of this section.

10.08.020 Animals allowed without permit.

The following animals may be maintained without a permit:

- (a) Three cats or dogs or a combination thereof on a parcel of land improved with a dwelling designed for a single family, or on any other parcel of land under a single ownership;
- (b) Two cats or dogs or one of each in a duplex unit, apartment or a unit of a multiple dwelling development; or
- ~~(c) Three cats or dogs or a combination thereof on any other parcel of land under a single ownership;~~
- (d) ~~Animals normally~~ Common household pets, maintained as pets by children, other than cats and dogs, such as guinea pigs, hamsters, lizards, frogs, tadpoles reptiles and amphibians, aquarium-kept fish, cage-maintained birds, and rabbits provided any such animal is not vicious or dangerous to human safety, or creates a public or private nuisance. The city council The City Manager or delegee shall determine any controversy respecting the nature of any animal or species of animals permitted under this subsection.
- (e) Service animals as defined by the American with Disabilities Act, set forth at 28 CFR, Chapter 1, §§ 35.104, 35.136, as may be amended.

10.08.030 Permit – Required for certain animals.

In any of the following cases, animals may be maintained within the city limits upon first obtaining a permit from the city manager, or ~~delegee~~ his/her designated representative, after a finding that the maintenance thereof will not be contrary to the purposes of this Chapter, a public or private nuisance, nor detrimental to property values or human health or safety:

- (a) Cats and/or dogs in excess of the limits prescribed in PGMC 10.08.020;
- (b) Bees and bee swarms in boxes or hives;
- (c) Chickens;
- ~~(e) Where the an animal or animals will be used exclusively for educational, and/or or scientific, purposes; and that their presence in the city will not be contrary to the purposes of this Chapter or offensive to the owners or occupants of any property within the city;~~
- ~~(e) Where the restrictions and regulations of this Chapter impose substantial hardship on the applicant which is singular and peculiar to him or her by reason of the nature of his or her property and his or her proposed use of the animal or animals (as distinguished from the characteristics or propensities of the applicant~~
- (f) ~~The~~ An animal or animals ~~are to be~~ used for a temporary period of time in connection with a promotion, display or theatrical-type exposition, circus or performance and appropriate safeguards will be employed to protect the public health, safety and welfare and.
- (g) Non-household animals used for a temporary period of time for fire suppression with appropriate safeguards employed to protect the public health, safety and welfare.

The decision of the city manager, or delegee, ~~his/her delegated representative~~, shall be posted both at the property site and at City Hall for a period of 15 calendar days before the permit takes effect, and during that period may be appealed by any interested person to the administrative hearing officer under Chapter 1.19. ~~for a de novo review and decision by the city council.~~

10.08.040 Permit – Conditions – Revocation or modification.

Any permit issued by the city may be subject to such conditions and time limitations as the city deems appropriate, and is subject to revocation or modification by the City Manager, or delegee. Any person denied a permit, or to whom a notice of revocation or modification has been issued, may appeal the decision to an administrative hearing officer under Chapter 1.19.

10.08.050 Regulations for keeping.

Any person who keeps or maintains an animal in the city, whether or not under special permit granted under PGMC 10.08.030, shall comply with the following regulations:

- (a) The animal shall be confined in such place and manner as does not constitute a public or private nuisance;
- (b) No garbage shall be fed to animals;
- (c) **Animal waste as defined as feces, food, or any other matter that emits an offensive odor, shall be promptly collected and disposed of in accordance with PGMC § 9.16.020.** Animal excretion **waste** shall not be permitted to accumulate so as to become offensive to any neighboring property, nor accumulate in any amount within 15 feet of any neighboring property, nor on any public property or private property belonging to others.;
- (d) **If the City determines the keeping or maintaining of an animal may affect water quality or the environment, the property owner shall implement measures to eliminate pollution and prevent the migration of waste components to the storm drain system or any other environmental impacts. Installation of such measures may require permits from the city or other regulatory agency and are the sole responsibility of the property owner.**

10.08.060 Prosecutions.

In any prosecution under this Chapter, the defendant shall have the burden of producing any permit issued by the city for an exception hereto. In any prosecution under this Chapter, the person who is shown to be in possession of the premises shall prima facie be deemed in possession and control of any animals thereon kept or maintained.

10.08.070 Enforcement.

A violation of this chapter shall constitute an infraction, and may be enforced pursuant to Chapter 1.16 **or 1.19** PGMC.

SECTION 3. The text set forth in existing Chapter 10.10 of the Pacific Grove Municipal Code entitled, "Feeding Animals" shall be amended by the addition of all text shown in bold, italic, underscored text (**bold, italic, underscored text**), deletion by ~~strike through~~ as follows:

Chapter 10.10 FEEDING ANIMALS

Sections:

10.10.010 Prohibited – Where – Exceptions.

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(a) It is unlawful for any person to feed or offer food to any animal, or to scatter food, seed or other forms of matter attractive to animals on any public way, street, park or public property, **or within one hundred feet of any body of water or coastline,** in the City of ~~Pacific Grove~~, or on any property in such city of which such person is not lawfully possessed.

(b) It is unlawful for any person to feed, offer food, or in any manner provide food as sustenance or to encourage domesticity, to any ~~non-domesticated~~ **non-household** animal, **including but not limited to raccoons, deer, squirrels, or birds, on private and public property, including any public way, street, or park, within City limits** subject to the following exceptions:

- (1) Bird feeders **on private property** shall ~~not be prohibited~~ **allowed**;
- (2) ~~Wildlife~~ **Non-household animals** may be maintained, treated or fed **temporarily** pursuant to a valid certificate or permit issued by the federal or state government **and**;
- (3) ~~Wildlife~~ **Non-household animals** may be fed as necessary due to injury or illness between the time of notification to humane personnel to pick up such wildlife and the time of pick up.

(c) **Garbage, refuse and trash shall be disposed of in covered waste containers including dumpsters that are tamperproof and emptied regularly. Any such container found disrupted by animals shall be the responsibility of the property owner pursuant to PGMC§ 9.16.040.**

(d) Any violation of this section shall constitute an infraction, and may be enforced pursuant to Chapter 1.16 PGMC **or 1.19.**

SECTION 4. The text set forth in existing Chapter 10.04.190 of the Pacific Grove Municipal Code entitled, "Vicious dogs - Abatement" shall be amended by the addition of all text shown in bold, italic, underscored text (**bold, italic, underscored text**), deletion by ~~strikethrough~~ as follows:

Chapter 10.04 ANIMALS

Sections:

10.04.190 Vicious dogs – Abatement.

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Within the city of Pacific Grove there are vicious dogs which constitute a public nuisance and which should be abated. The provisions of this section provide an administrative procedure by which dogs found to be a nuisance may be abated following a hearing at which oral and documentary evidence is considered. This section is intended to supplement rather than supplant any other remedy available either under state law or this code.

(a) Any dog presumed vicious under the terms of PGMC 10.04.170 may be investigated by the chief of police or his or her delegate. If, based on the investigation, it is concluded that there is probable cause to believe that the dog is vicious, and that there is need to abate the dog as a vicious dog, the chief shall so certify to the city manager in writing within 10 days following completion of the investigation. A copy of the certification shall be mailed to the person owning or controlling the dog.

(b) If there is probable cause to believe that a dog is vicious, and requires abatement and the chief of police so certifies, **and upon the issuance of a warrant,** any police officer or other authorized employee of the city may enter upon private premises in order to seize any such vicious dog, whether running at large or not, and shall confine said dog at an appropriate animal shelter. The confinement of any vicious dog shall continue pending **an administrative hearing and administrative order held pursuant to PGMC Sections 1.19.180 and 1.19.190** ~~the decision~~

of a hearing officer designated by the city manager following the hearing provided for in subsection (c) of this section. The cost of said confinement shall be paid by the person owning or controlling such dog. The dog shall not be released until such costs have been paid in full, unless the person owning or controlling such dog submits an advance deposit hardship waiver pursuant to PGMCS1.19.100.

(c) An administrative hearing date shall be held pursuant to PGMCS 1.19.180 set not later than 20 days from the date of certification of a vicious dog as provided in subsection (a) of this section. The administrative hearing officer shall be selected pursuant to PGMCS 1.19.170. The notice of the hearing shall be issued pursuant to PGMCS 1.19.170(c) to designated by the city manager shall mail or otherwise deliver notice of the hearing to the owner or person controlling the dog. The City may mail notice to other interested persons, including but not necessarily limited to, all properties within 300 feet of the address of the owner or person controlling the vicious dog, at least five (5) days prior to the date set for hearing.

~~(d) At the hearing, which may be continued from time to time, both oral and documentary evidence may be taken from any interested person and considered in determining whether the dog is vicious. Strict rules of evidence need not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs. The decision of the hearing officer shall be supported by the weight of the evidence and shall be final.~~

~~(ed) If, based upon the hearing, the hearing officer designated by the city manager finds that the dog is vicious and requires abatement, he or she shall so specify in writing together with the reasons therefor. Any dog found to be vicious and subject to abatement is hereby deemed a public nuisance and shall be, pursuant to the order of the hearing officer, humanely destroyed or removed from the city, or the nuisance otherwise abated by appropriate order including, but not limited to, confinement, fencing, muzzling or leashing. The decision of the hearing officer shall be made within 10 days after the conclusion of the hearing and shall be final. A copy of the decision shall be sent by registered mail or otherwise delivered to the person owning or controlling the dog. The decision of the hearing officer shall be final for all purposes.~~

(e) Any dog found by the administrative hearing officer to be vicious and subject to abatement is hereby deemed a public nuisance and shall be, abated by appropriate order pursuant to the order of the hearing officer, including, but not limited to, muzzling, leashing, fencing, or confinement or removed from the city or humanely destroyed.

(f) If the administrative hearing officer finds the dog is vicious and subject to abatement, the city-incurred costs of impoundment, including any abatement, shall be paid by the owner or the person controlling the dog and shall become a lien against the real property upon which the dog was kept and maintained until said assessment is paid. If the administrative hearing officer finds that the dog is vicious but not subject to abatement, or if the order includes the release of a dog found to be vicious to the owner or person controlling it, the dog shall not be released until such costs have been paid in full. If such costs have not been paid within 14 days after the date of mailing or delivery of the order, the city manager may dispose of the dog in any manner provided by law.

(g) The assessment shall be due and payable within 14 days after the date of mailing or delivery of the order. If the assessment is not paid on or before said date, the total amount thereof may be entered on the next fiscal year tax roll as a lien against the property upon which the dog was maintained and shall be subject to the same penalties as are provided for other delinquent taxes or assessments of the city, or an action may be brought in the name of the city to recover the costs of impoundment.

SECTION 5. The text set forth in existing Chapter 14.08.030 of the Pacific Grove Municipal Code entitled, "Dogs prohibited in public parks - Exceptions" shall be amended by the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), deletion by ~~strikethrough~~ as follows:

Chapter 14.08 PARKS

Sections:

Section 14.08.030 Dogs prohibited in public parks – Exceptions

(a) Subject to the exceptions set out in subsections (b) and (c) of this section, it is unlawful for any person to lead or conduct any dog, whether or not on a leash, within any public park or cemetery in the city.

(b) On-Leash Exceptions. As exceptions to the general prohibition of subsection (a) of this section, dogs are permitted on leash at any time in the following areas, subject to all other applicable provisions of this code:

(1) In that portion of George Washington Park lying northerly of the little league baseball field;

(2) ***On any improved or natural trail or path in our coastal zone including, all property included within the recreational walking and biking trails running along the city's waterfront and shoreline. from the city boundary on the east to Seventeenth Street on the west;***

(3) ~~In Perkins' Park as that park is defined in PGMC 14.08.020;~~

(34) In Lynn "Rip" Van Winkle open space;

(5) ~~In the Lighthouse Reservation, but only seaward of Ocean View Boulevard;~~

(6) ~~In Shoreline Park. For the purposes of this subsection, where any public park, excepting the recreational walking and biking trail and Perkins' Park, abuts Monterey Bay or the Pacific Ocean, the public park area shall extend to the low tide line of the water.~~

(4) In Lovers Point Park, excluding the beach and grass areas;

(5) In Berwick Park; and

(6) Along the Southern-Pacific Railroad right-of-way from Lighthouse Avenue to Sunset Drive.

(c) Off-Leash Exceptions. As further exceptions to the general prohibition of subsection (a) of this section, dogs are permitted to run freely, without leash or any other physical restraint, between sunrise and 9:00 a.m. and 4:00 p.m. and sunset in the following areas; provided, that at no time in such areas shall a dog be further than 50 yards from the person accompanying the dog in the area:

- (1) In that portion of George Washington Park bounded by Short Street, Melrose Avenue, Alder Street and Pine Avenue;
- (2) In Lynn "Rip" Van Winkle open space.
- (d) A violation of this section shall constitute an infraction, and may be enforced pursuant to Chapter 1.16 PGMC.

SECTION 6. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 7. 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 8. 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 9. PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 7th day of June, 2017, by the following vote:

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

NOES: None.

ABSENT: None.

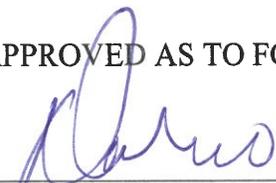
APPROVED:



BILL KAMPE, Mayor

ATTEST:


SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:


DAVID C. LAREDO, City Attorney