

ORDINANCE NO. 20-018

**AN URGENCY ORDINANCE OF THE
CITY OF PACIFIC GROVE TO ADOPT THE CALIFORNIA DEPARTMENT OF
PUBLIC HEALTH'S GUIDANCE FOR USE OF FACE COVERINGS
TO BE ENFORCEABLE BY MISDEMEANOR, INFRACTION OR
ADMINISTRATIVE CITATION WITHIN THE CITY OF PACIFIC GROVE**

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives;

WHEREAS, the County of Monterey Health Officer, on March 17, 2020, issued a shelter in place order that was amended on April 3, 2020, April 28, 2020, May 1, 2020, and May 8, 2020;

WHEREAS, the County of Monterey Health Officer on May 26, 2020 issued an amended order, that was effective upon the posting by the California Department of Public Health, on its website entitled the County Health Officer's Attestation for a Variance through Stage 2 of the State's Roadmap to Pandemic Resilience;

WHEREAS, the May 26, 2020 order superseded the May 1, 2020 and May 8, 2020 Orders of the Health Officer and left the April 28, 2020 (facial coverings) and May 3, 2020 (short term lodging facilities) in effect;

WHEREAS, the County Health Officer's attestation for a variance was posted on May 30, 2020 and the County Health Officer's order dated May 26, 2020 became effective on May 30, 2020;

WHEREAS, Monterey County continues to experience increases in confirmed cases, hospitalizations, fatalities, and test positivity rates related to COVID-19;

WHEREAS, the California Department of Public Health (CDPH) has released and updated its Guidance for the Use of Face Coverings (Guidance) that states "...we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing."

WHEREAS, The CDC, CDPH, and MCHD have stated wearing a face covering, when combined with physical distancing of at least six feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public...by reducing the spread of respiratory droplets.

WHEREAS, California law allows local enforcement of state public health orders by cities, and people who fail to comply may be charged with a misdemeanor, infraction or administrative citation;

WHEREAS, the City of Pacific Grove has received numerous complaints from residents and visitors that some members of the public do not heed the Guidance, and the number of infected persons in Monterey County is rapidly rising;

WHEREAS, crowded locations in the City of Pacific Grove on occasion have experienced numbers of people to not properly use face coverings and fail to maintain six-foot social distancing from other individuals, which seriously impedes community efforts to stem the local transmission of COVID-19;

WHEREAS, the intent of this urgency ordinance is to provide a tool, in addition to education, to compel compliance with the Guidance by authorizing enforcement of the Guidance through the issuance of misdemeanor, infraction or administrative citations pursuant to the Pacific Grove Municipal Code;

WHEREAS, Article 15 of the City Charter enables the Council to enact an urgency ordinance when the measure is needed by an emergency to preserve the public peace, health, safety or public welfare; and

WHEREAS, this ordinance is an urgency ordinance necessary for the immediate preservation of the public health, safety and welfare;

WHEREAS, an urgency ordinance takes immediate effect and is necessary to avoid the immediate threat to public peace, health, and safety. Failure to adopt this urgency ordinance would impede efforts to stem the local transmission of COVID-19. The City has a compelling interest to stop the spread of this communicable disease, and authorizing an administrative enforcement tool for failure to comply with CDPH's Guidance is a narrowly tailored means of achieving that objective;

WHEREAS, this urgency ordinance is exempt from the California Environmental Quality Act Guidelines (Article 18, Section 15269.c) because the City is adopting an urgency ordinance related to COVID-19. Specific actions are needed to prevent or mitigate the spread of COVID-19 such as, but not limited to, infraction citation or administrative enforcement of face covering guidance. The actions proposed are immediate actions and are necessary to protect the health and safety of the City's citizens.

NOW, THEREFORE, the City Council of the City of Pacific Grove does hereby ordain as follows:

SECTION 1. Recitals.

The recitals set forth above are true and correct and are adopted as findings of the City

Council as though set forth fully herein.

SECTION 2. Declaration of Urgency.

The City Council finds it is necessary to adopt this ordinance pursuant to California Government Code to protect the public health, welfare and safety.

SECTION 3. Face Mask Requirements.

The California Department of Public Health (CDPH) Guidance for the Use of Face Coverings (Guidance), guidelines and exemptions concerning the use of face coverings, as may be amended from time to time, are hereby expressly acknowledged and declared to be enforceable within the City of Pacific Grove as if directly enacted by ordinance of the City in accord with the City Charter.

SECTION 4. Rebuttable Presumption.

A rebuttable presumption is hereby established that it is not feasible for persons to maintain a distance of at least six feet away from persons who are not members of the same household or residence provided one or more of the following circumstances exist:

- The person is in line to enter any public or private space unless exempted by State Guidance; or
- The person is at a Public Park.

This presumption may be rebutted by a preponderance of the evidence.

SECTION 5. Face Mask Enforcement.

Any person who violates Face Mask Requirements contained in the CDPH Guidance is in violation of this Ordinance and is subject to citation for a misdemeanor, an infraction or under the administrative citation process as provided by Chapters 1.16 (Violations), and 1.19 (Municipal Code and Ordinance Enforcement) of the Pacific Grove Municipal Code (PGMC). The fine for the first violation of this Ordinance shall be \$100, second violation by the same person shall be \$200, and third and all subsequent violations by the same person shall be \$500. Notwithstanding the authority to issue citations, enforcement officers shall place an emphasis on educational efforts, and shall hold discretion to issue warning notices in lieu of citations for first-time offenders.

Failure to comply with CDPH Guidance shall also constitute a public nuisance.

SECTION 6. Interpretation.

This Ordinance shall be liberally construed to provide maximum possible protections for the residents and visitors of the City of Pacific Grove.

SECTION 7. Conflict.

Any ordinance and part of an ordinance in conflict with this Urgency Measure shall be suspended for the effective period of this Ordinance.

SECTION 8. Enforcement Officers.

For purposes of this Ordinance and the PGMC, the term “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 as designated an enforcement officer by the city manager.

SECTION 9. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable.

SECTION 10. Effective Date.

In accordance with Government Code section 65858 and Article 15 of the City Charter, this ordinance shall take immediate effect upon adoption by a 5/7ths vote of the City Council. This ordinance shall sunset when the Guidelines are terminated by the CDPH or by the City Council, whichever occurs first. Upon adoption, this ordinance supersedes/terminates the Order of the Director of Emergency Services dated June 29, 2020.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 5th day of August, 2020, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, McAdams, Smith, and Tomlinson

NOES: None.

ABSENT: None.

APPROVED:

DocuSigned by:
Bill Peake
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BILL PEAKE, Mayor

ATTEST: 8/6/2020

DATED: _____

DocuSigned by:

Sandra Kandell

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SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

David C. Laredo

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DAVID C. LAREDO, City Attorney