

ORDINANCE NO. 18-018

ORDINANCE OF THE PEOPLE OF THE CITY OF PACIFIC GROVE AMENDING THE PACIFIC GROVE GENERAL PLAN AND AMENDING CHAPTER 23.64 TO IMPLEMENT AN INITIATIVE MEASURE REQUIRING A VOTE OF THE PEOPLE

WHEREAS, the People of the City of Pacific Grove, at the General Election held on November 6, 2018, approved an initiative measure (“Measure M”) to amend the Pacific Grove General Plan and the Pacific Grove Municipal Code.

WHEREAS, the measure entitled *Initiative to Preserve and Protect Pacific Grove’s Residential Character* passed by majority vote as declared by Council on December 5, 2018.

The people of the City of Pacific Grove do ordain as follows:

SECTION 1: PURPOSE, EFFECT, AND FINDINGS

- A. Purpose:** The purpose of this *Initiative to Preserve and Protect Pacific Grove’s Residential Character* (“Initiative”) is to prohibit and phase out existing permitted short-term rentals in residential neighborhoods, thereby advancing the central premise of the City of Pacific Grove’s charter that business and industry shall be compatible with Pacific Grove’s residential character.
- B. Effect:** This Initiative amends the City of Pacific Grove’s General Plan and Municipal Code to prohibit and phase out existing permitted short-term rentals in residential districts, except in the Coastal Zone. It establishes an 18-month sunset period for short-term rentals prohibited under this Initiative. It does not change existing rules for licensing short-term rentals where they are not prohibited or existing rules permitting home sharing.
- C. Findings:** The people of the City of Pacific Grove find that this Initiative promotes and protects the health, safety, welfare, and quality of life of City residents, based upon the following findings, any one of which is sufficient to support adoption of this Initiative:
- 1. Pacific Grove Is Primarily a City of Homes and the City Must Protect Its Residential Character.** As of December 21, 2017, the date that the notice of intention to circulate this Initiative was submitted to the elections official of the City of Pacific Grove (“Submittal Date”), the Pacific Grove City Charter, in Article 5.5, the Pacific Grove General Plan, and the Pacific Grove Municipal Code recognize that Pacific Grove is “primarily a city of homes” and that “business and industry shall be compatible with its residential character.”
 - 2. Residential Land Use Designations Protect Residential Uses.** The purpose of Pacific Grove’s residential districts is to provide appropriately zoned areas within the City for long-term residents and to enhance and maintain the residential character of the City. The City of Pacific Grove’s Zoning Map depicting the City’s residential districts is attached as Exhibit A for informational purposes.
 - 3. Residential Districts Are Intended for Long-Term Housing.** The Pacific Grove General Plan defines “dwelling unit” as “A room or group of rooms—including sleeping, eating, cooking, and sanitation facilities—that constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis (i.e., for more than 30 days.)” (Pacific Grove General Plan, Glossary, p. 175). This Initiative protects the integrity of residential neighborhoods by prohibiting short-term rental of residential property in residential districts outside the Coastal Zone.
 - 4. Short-Term Rental Is a Commercial Use Incompatible with Residential Uses.** The short-term rental of residential property is a commercial use that is in conflict with the longstanding definition of a “dwelling unit” as a “long-term” residence and is incompatible with the character of residential neighborhoods.
 - 5. Use of Residential Property for Short-Term Rentals Threatens Residential Neighborhoods.** As the California Court of Appeal recognized in *Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d 1579, short-term rentals have unmitigable, adverse impacts because they threaten the character and stability of a residential neighborhood. Short-term tenants have little interest in the welfare of Pacific Grove’s residents or local government; the *Ewing*

court observed that transient visitors are “here today and gone tomorrow – without engaging in the sort of activities that weld and strengthen a community.”

6. **The City’s Actions to Allow Short-Term Rentals Interfere with Pacific Grove’s Residential Character.** In 2010, the City began allowing rentals for stays of less than 30 days in residential districts. The City’s attempts to regulate short-term rentals have been inadequate to manage the adverse impacts of these commercial uses on Pacific Grove’s residential character. Short-term rentals have increased traffic, parking demand, light and glare, and noise, to the detriment of surrounding residential uses and the general welfare of Pacific Grove. In addition, management and enforcement needs have imposed new demands on city resources, including police, community development, and code enforcement, while burdening neighbors with unwanted monitoring and reporting responsibilities.
7. **The City’s Recent Efforts to Mitigate Adverse Impacts of Short-Term Rentals Are Insufficient.** In 2017, the City adopted a cap on short-term rental licenses and limits on density with the stated intent of eliminating over-concentration of short-term rentals in particular neighborhoods. However, these regulations will be ineffective because the City included a “grandfathering” provision that will allow existing short-term rentals to continue operating indefinitely. The new regulations will not generate a meaningful reduction in the adverse impacts of short-term rentals in Pacific Grove.
8. **Pacific Grove Provides Ample Lodging for Visitors Without Short-Term Rentals in Residential Districts.** This Initiative does not change existing rules for bed and breakfast inns, motels, hotels, and other visitor lodging in Pacific Grove. In addition, in 2011, Pacific Grove voters approved Measure U, which allows for additional motel guest units and room tax revenue. Further, residents may allow short-term occupancy of their homes for home sharing, house swaps, house sitting, pet sitting, work trade, and similar arrangements. These additional activities are compatible with residential uses and are not prohibited by this Initiative. These types of accommodations provide ample lodging to serve visitors while preserving Pacific Grove’s residential character.

D. Flexibility: This Initiative preserves important flexibility for the City, based upon the following:

1. **The City May Address Short-Term Rentals in the Coastal Zone in the Local Coastal Program Update.** The California Coastal Act imposes restrictions on the use of land in the Coastal Zone, including Pacific Grove’s coast. The California Coastal Commission, which implements the Coastal Act, has stated that regulation of short-term rentals in the Coastal Zone must occur within the context of the Local Coastal Program, subject to Commission review. The City is currently drafting a comprehensive update to Pacific Grove’s Local Coastal Program. While this Initiative does not prohibit short-term rentals in the Coastal Zone, it identifies local conditions that the Commission has acknowledged may support short-term rental restrictions in the Coastal Zone, namely that the community “already provides an ample supply of vacation rentals” and that “further proliferation of vacation rentals would impact community character.” This Initiative does not prevent the City from imposing a short-term rental ban or further limitations in the Coastal Zone. The City of Pacific Grove’s Coastal Zone Land Use Plan, Figure 4, depicting the Coastal Zone boundaries is attached as Exhibit B for informational purposes.
2. **The City May Adopt Additional Rules to Facilitate Effective Enforcement.** This Initiative is enforceable under existing provisions of the Pacific Grove Municipal Code. It does not constrain the City’s authority to conduct code enforcement in the manner that best protects the welfare of the entire community.
3. **Limited Sharing of Single-Family Homes Will Not Erode Pacific Grove’s Residential Character.** Under the permitting scheme established by the Pacific Grove home sharing ordinance in effect as of the Submittal Date, a long-term resident may rent one or two rooms in a single-family home to a maximum of two adults and two children, while the long-term resident also occupies the home. The ordinance’s home sharing permit requirement and strict limits on home sharing protect Pacific Grove’s residential character and ensure that residential property is used by long-term residents. This Initiative does not change the City’s existing rules for home sharing.
4. **Future General Plan Updates Must Be Consistent with This Initiative.** As of the Submittal Date, the City of Pacific Grove was considering possible General Plan amendments directed at short-term rentals. Adoption of this Initiative ensures that the will of the people to prohibit short-term rentals in residential districts, as described in this Initiative, is fulfilled. This Initiative is not intended to direct or constrain the City with respect to its ability to amend, revise, or update the General Plan or other land use regulations. However, if this Initiative is adopted, any amendment, revision, or update to the General Plan adopted after the Submittal Date shall be amended to ensure consistency with this Initiative.

SECTION 2: PACIFIC GROVE GENERAL PLAN AMENDMENTS

A. This Initiative hereby amends the Pacific Grove General Plan (“General Plan”), as amended through the Submittal Date. Text to be inserted in the General Plan by this Initiative is indicated in **bold** type. The language adopted by this Section 2 may be repealed or amended only by a vote of the people.

B. The General Plan Land Use Element (which is a part of the General Plan) is amended to add the following new Policy 1.5:

Policy 1.5 Protect Pacific Grove’s residential character by prohibiting the short-term (less than 30 consecutive calendar days) rental of residential property in residential zoning districts, except to the extent such use is allowed in the Coastal Zone under the Local Coastal Program. The Pacific Grove Municipal Code shall be consistent with this Policy.

C. The General Plan Land Use Element is amended to add the following text after Policy 1.5:

Policy 1.5 was added by the Initiative to Preserve and Protect Pacific Grove’s Residential Character. Policy 1.5 may be repealed or amended only by a vote of the people. The Initiative also amended the Pacific Grove Municipal Code to be consistent with Policy 1.5, including a requirement that existing transient use of residential property inconsistent with Policy 1.5 be discontinued within 18 months from the date the Initiative was approved by the voters.

SECTION 3: PACIFIC GROVE MUNICIPAL CODE AMENDMENTS

A. This Initiative hereby amends the Pacific Grove Municipal Code (“Municipal Code” or “PGMC”), as amended through the Submittal Date. New text to be inserted in the Municipal Code is indicated in **bold** type, and text to be deleted is indicated in ~~striketrough~~ type. Text in standard type currently appears in the Municipal Code.

B. PGMC 23.64.350, “Transient use of residential property for remuneration,” is amended and readopted in full as follows:

23.64.350 Transient use of residential property for remuneration.

(a) Definitions. For the purpose of this chapter certain terms used herein shall have the meanings set forth in this chapter, and such meanings shall prevail in case of conflict with the definitions set forth in Chapter 23.08 PGMC.

(1) “Person” means an individual, a group of individuals, or an association, firm, partnership, corporation or other entity, public or private.

(2) “Owner” means the person who possesses fee title to a transient use site.

(3) “Owner representative” means any person authorized by the owner to fully manage the transient use site.

(4) “Remuneration” means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession or use of real property.

(5) “Residential property” means any dwelling unit, except those dwelling units lawfully established ~~as second units established pursuant to Chapter 23.80 PGMC~~ or as part of a bed and breakfast inn, motel, hotel, timeshare development, or other transient use **not prohibited by this section**.

(6) “Responsible tenant” means a person aged 18 or older who has received notice of occupancy, parking and other limits and regulations that apply to the transient use site, and who has agreed to be responsible to ensure that impermissible or inappropriate behavior does not occur at the transient use site.

(7) “Transient” means a period of time less than 30 consecutive calendar days.

(8) “Transient use of residential property” means the commercial use, by any person, of residential property for transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is less than 30 consecutive calendar days.

(9) “Transient use site” and “transient use” mean property occupied and used for transient or short-term rental purposes.

(10) “Use” means the purpose for which land or premises of a building thereon is designed, arranged or intended, or for which it is or may be occupied or maintained.

(b) Transient use of residential property must comply with General Plan Policy 1.5. Specifically, transient use of residential property for remuneration is prohibited, and no transient use license may be issued, in any residential zoning district, including R-1, R-H, R-1-H, R-1-B-2, R-1-B-3, R-2, R-2-B-3, R-3, R-3-P.G.R., R-3-M, R-4, and all PUD Districts, except to the extent that such use is both (1) in the Coastal Zone and permitted under the Local Coastal Program, and (2) permitted by a transient use license issued by the City. Transient use of residential property for remuneration in non-residential zoning districts is prohibited, except (1) as otherwise expressly permitted by this title, or (2) when such use is permitted by a transient use license issued in accord with Chapter 7.40 PGMC by the City. Transient use of residential property for remuneration does not include “home sharing” permitted by the City or house swaps, house sitting, pet sitting, work trade, and similar non-commercial arrangements that do not involve an exchange of money.

(c) In order to provide a reasonable phase-out of transient uses of residential property for remuneration, notwithstanding any other provision of this Code, all uses that become nonconforming as a result of the amendment to this section by the *Initiative to Preserve and Protect Pacific Grove’s Residential Character*, including uses permitted under short-term rental licenses, shall be discontinued within 18 months from the date that the Initiative was approved by the voters. Nothing in this subsection is intended to affect any City authority to terminate uses found to be a nuisance, or that are otherwise unlawful.

~~(d)~~ Liability and Enforcement.

(1) Any owner, owner representative, responsible tenant, person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who uses, arranges, or negotiates for the use of residential property in violation of the provisions of this chapter is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this chapter.

(2) Any owner, owner representative, responsible tenant, or other person who uses, or allows the use of, residential property in violation of the provisions of this chapter is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this chapter.

(3) Violations of this chapter may be prosecuted pursuant to Chapter 1.16 PGMC, or enforced pursuant to Chapter 1.19 PGMC.

(4) Penalties may be assessed for violations as provided in Chapters 1.16, 1.19, and/or 7.40 PGMC. The maximum limits set for administrative penalties in PGMC 1.19.200, however, shall not apply to any violation of this chapter or Chapter 7.40 PGMC.

(e) This section may be repealed or amended only by a vote of the people, except that amendments do not require a vote of the people if they (1) apply only in the Coastal Zone or (2) amend subsection (d) concerning liability and enforcement.

C. This Initiative does not prohibit the City from taking action to regulate transient use of residential property in the Coastal Zone or in non-residential districts. Such regulations may be adopted by the City Council as it deems necessary and appropriate.

SECTION 4: APPLICATION

A. The provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California.

B. In the event a property owner contends that application of this Initiative effects an unconstitutional taking of property, the City may grant, upon request of the affected property owner, an exception to the application of any provision of this Initiative if the City finds, based on substantial evidence, that both (1) the application of that provision of this Initiative could constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking.

SECTION 5: IMPLEMENTATION

- A. **Effective Date:** “Effective Date” means the date that this Initiative became effective pursuant to State law.
- B. **Pacific Grove General Plan:** Upon the Effective Date of this Initiative, the provisions of Section 2 of the Initiative are hereby inserted into the Pacific Grove General Plan, as an amendment thereof; except that if the four amendments of the mandatory elements of the General Plan permitted by State law for any given calendar year have already been used in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the General Plan on January 1 of the following year. Upon the Effective Date of this Initiative, any provisions of the Pacific Grove Municipal Code or any other City of Pacific Grove ordinance or resolution that are inconsistent with the provisions adopted by this Initiative shall not be enforced in a manner inconsistent with this Initiative.
- C. **Interim Amendments:** All references in this Initiative to the Pacific Grove General Plan are to the General Plan in effect on the Submittal Date. That General Plan, as amended by this Initiative, comprises an integrated, internally consistent, and compatible statement of policies for the City of Pacific Grove. In order to ensure that nothing in this Initiative prevents the General Plan from being an integrated, internally consistent, and compatible statement of the policies of the City, as required by State law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any amendment or update to the General Plan that is adopted between the Submittal Date and the date that the General Plan is amended by this Initiative measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by this Initiative, be amended as soon as possible to ensure consistency between the provisions adopted by this Initiative and other provisions of the General Plan.
- D. **Other Plans, Ordinances, and Policies:** The City of Pacific Grove is hereby authorized and directed to amend the Pacific Grove General Plan and Municipal Code, and other ordinances and policies affected by this Initiative, as soon as possible and periodically thereafter as necessary to ensure consistency between the provisions adopted in this Initiative and other sections of the General Plan, Municipal Code, and other City plans, ordinances, and policies.
- E. **Reorganization:** The Pacific Grove General Plan and Municipal Code may be reorganized or readopted in different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the General Plan and Municipal Code, provided that the provisions adopted or readopted in Sections 2 and 3 of this Initiative shall remain in the General Plan and Municipal Code, respectively, unless earlier repealed or amended by vote of the people of the City of Pacific Grove.
- F. **Implementing Ordinances:** The City Council is authorized, after a duly noticed public hearing, to adopt implementing ordinances, guidelines, rules, and/or regulations, as necessary, to further the purposes of this Initiative.
- G. **Defense of Initiative:** The City Council shall take all steps reasonably necessary to defend this Initiative against any challenge to its validity.
- H. **Project Approvals:** Upon the Effective Date of this Initiative, the City of Pacific Grove shall not grant, or by inaction allow to be approved by operation of law, any General Plan amendment, rezoning, specific plan, license, use permit, development agreement, or any other discretionary entitlement that is inconsistent with this Initiative. This Section does not prohibit the City from renewing a short-term rental license for a short-term rental in existence on the date this Initiative is adopted, provided that the renewal shall not continue beyond the phase-out date established by PGMC 23.64.350(c), as amended by this Initiative.

SECTION 6: EFFECT OF COMPETING OR ALTERNATIVE MEASURE ON THE SAME BALLOT

This Initiative adopts a comprehensive scheme prohibiting short-term rentals in residential districts, except in the Coastal Zone. By voting for this Initiative, the voters expressly declare their intent that any other measure which appears on the same ballot as this Initiative and addresses short-term rentals in residential districts, except in the Coastal Zone, or conflicts with any provision of this Initiative, shall be deemed to conflict with the entire cohesive scheme adopted by this Initiative. Because of this conflict, if this Initiative and any such other City of Pacific Grove measure receive a majority of votes by the voters voting thereon at the same election, then the measure receiving the most votes in favor shall prevail and no provision of the other measure shall take effect. For the purposes of this Section 6, any other measure that appears on the same ballot as this Initiative and purports to amend any provision of this Initiative shall be deemed to directly conflict with this entire Initiative.

SECTION 7: SEVERABILITY AND INTERPRETATION

This Initiative shall be broadly construed in order to achieve its purpose.

This Initiative shall be interpreted so as to be consistent with all applicable Federal and State laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

Any singular term shall include the plural and any plural term shall include the singular. The title and captions of the various sections in this Initiative are for convenience and organization only, and are not intended to be referred to in construing the provisions of this Initiative.

SECTION 8: AMENDMENT OR REPEAL

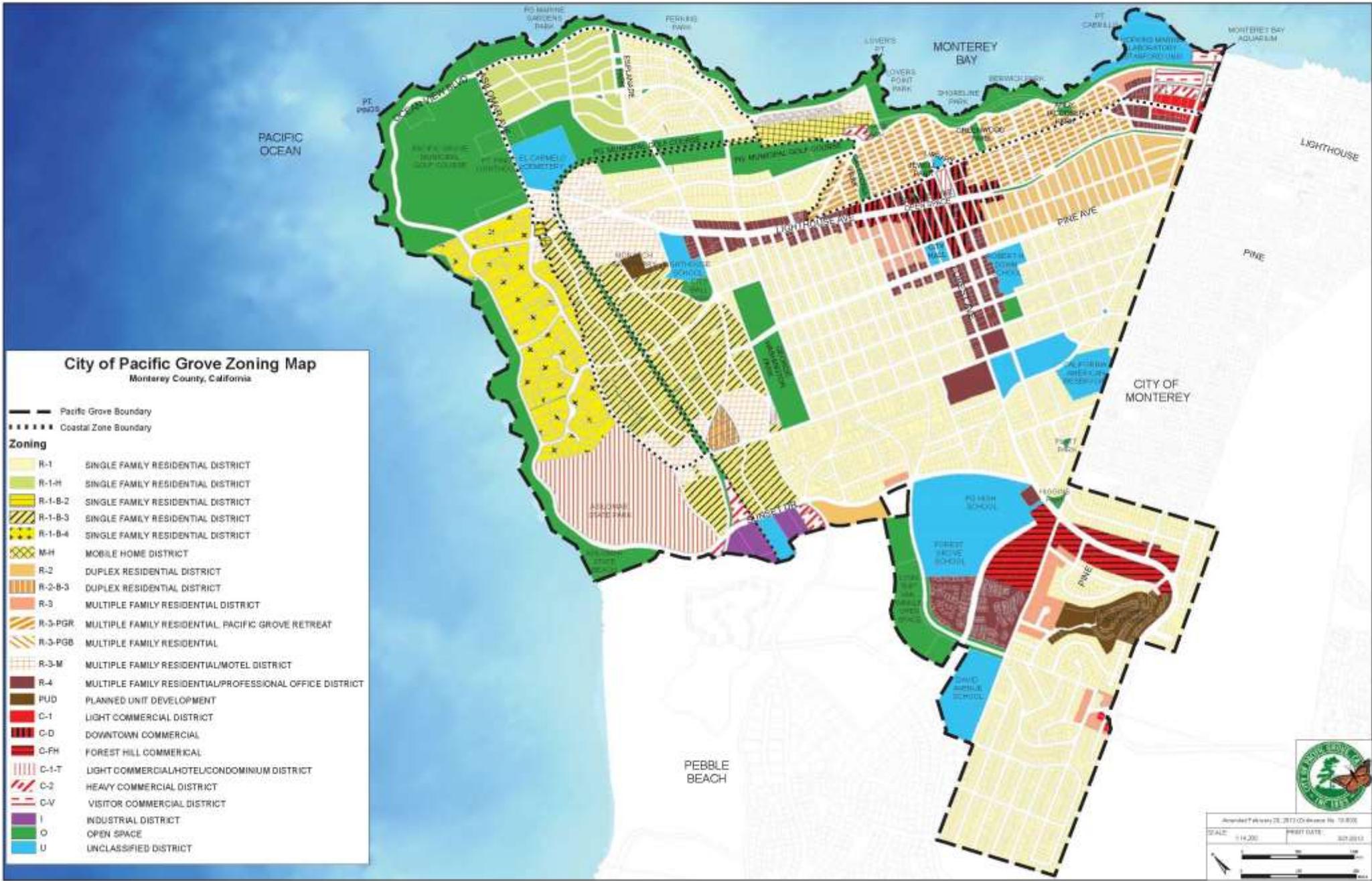
Except as otherwise provided in this Initiative, this Initiative may be amended or repealed only by the voters of the City of Pacific Grove.

SECTION 9: EXHIBITS

Two maps are attached to this Initiative as Exhibits for illustrative purposes only: (A) the City of Pacific Grove Zoning Map, and (B) the City of Pacific Grove Coastal Zone Land Use Plan, Figure 4. These maps are not affected by this Initiative.

Exhibit A

Attached, for illustrative purposes only, is the City of Pacific Grove Zoning Map depicting the City's zoning districts. This is a reduced copy of the version of the Zoning Map that was posted on the City's website as of the Submittal Date. This map is not affected by this Initiative.



City of Pacific Grove Zoning Map Monterey County, California

	Pacific Grove Boundary
	Coastal Zone Boundary
Zoning	
	R-1 SINGLE FAMILY RESIDENTIAL DISTRICT
	R-1-H SINGLE FAMILY RESIDENTIAL DISTRICT
	R-1-B-2 SINGLE FAMILY RESIDENTIAL DISTRICT
	R-1-B-3 SINGLE FAMILY RESIDENTIAL DISTRICT
	R-1-B-4 SINGLE FAMILY RESIDENTIAL DISTRICT
	M-H MOBILE HOME DISTRICT
	R-2 DUPLEX RESIDENTIAL DISTRICT
	R-2-B-3 DUPLEX RESIDENTIAL DISTRICT
	R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT
	R-3-PGR MULTIPLE FAMILY RESIDENTIAL, PACIFIC GROVE RETREAT
	R-3-PGB MULTIPLE FAMILY RESIDENTIAL
	R-3-M MULTIPLE FAMILY RESIDENTIAL/MOTEL DISTRICT
	R-4 MULTIPLE FAMILY RESIDENTIAL/PROFESSIONAL OFFICE DISTRICT
	PUD PLANNED UNIT DEVELOPMENT
	C-1 LIGHT COMMERCIAL DISTRICT
	C-D DOWNTOWN COMMERCIAL
	C-FH FOREST HILL COMMERCIAL
	C-1-T LIGHT COMMERCIAL/HOTEL/CONDOMINIUM DISTRICT
	C-2 HEAVY COMMERCIAL DISTRICT
	C-V VISITOR COMMERCIAL DISTRICT
	I INDUSTRIAL DISTRICT
	O OPEN SPACE
	U UNCLASSIFIED DISTRICT

Approved February 28, 2012 Ordinance No. 10-005
 SCALE: 1" = 400' PRINT DATE: 02/28/12

Exhibit B

Attached, for illustrative purposes only, is the Coastal Zone Land Use Plan, Figure 4, depicting the Coastal Zone boundaries. This is a reduced copy of the version of the Coastal Zone Land Use Plan, Figure 4, that was posted on the City's website as of the Submittal Date. This map is not affected by this Initiative.

Coastal Zone Land Use Plan

Figure 4

Legend

 Low Density Residential (1-2 du/ac) LDR 1-2	 Visitor Accommodation V.A.	 Open Space Institutional OSI
 Medium Density Residential for Mobile Home Park (8-10 du/ac) MDR 8-10(MHP) - Mobile Home/Mobile Home Park	 Visitor-Commercial V.C.	 Open Space Recreational OSR
 Medium Density Residential (8-10 du/ac) MDR 8-10	 Professional P	 Recreational Trail RT
 Medium-High Density Residential (10-20 du/ac) MHD 10-20	 Commercial C	 Area of Deferred Classification ADC
	 Planning Area Boundaries	 City Limits

