

ORDINANCE NO. 3429 C.S.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY
AMENDING MONTEREY CITY CODE CHAPTER 33 (SUBDIVISIONS), CHAPTER 37
(PRESERVATION OF TREES AND SHRUBS) AND CHAPTER 38 (ZONING)**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1: Monterey City Code Chapter 33 (Subdivisions) is hereby amended as follows:

Sec. 33-4. Conformance with General Plan, precise plans, and the Zoning Ordinance.

The Planning Commission shall deny approval of a tentative or final map if it makes any of the following findings:

(e) That the design of the subdivision or the type of improvements will conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. In this connection, the Planning Commission may approve a map if it finds that alternate easements for accessory use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or easements established by judgment of a court or competent jurisdiction.

Sec. 33-5. Advisory agency designated.

The Planning Commission is hereby designated as the advisory agency with respect to standard subdivisions as provided in the Subdivision Map Act of the State of California. The Planning Commission shall make investigations and reports on the design and improvement of any proposed division of real property for which a tentative map is filed, and shall consider requirements and conditions that should be placed upon such division of land. The Deputy City Manager of Plans and Public Works shall advise and assist in making investigations and reports on tentative maps.

Sec. 33-8. Responsibilities of agencies.

(a) Subdivider. The subdivider shall prepare maps and shall design improvements consistent with the standards of the City. He shall process the maps in accordance with the regulations set forth herein.

(b) Deputy City Manager of Plans and Public Works. The Deputy City Manager of Plans and Public Works shall be responsible for analyzing the design and coordinating the processing of minor subdivision maps, preliminary maps, and tentative maps. The Deputy City Manager of Plans and Public Works shall be responsible for coordinating the processing of final maps and parcel maps. In addition, he/she shall be responsible for determining whether the proposed subdivision improvements are consistent with the Standard Specifications for Improvements and with good engineering practice. He/She shall also be responsible for the supervision of the design and the installation of such improvements and, upon finding them acceptable, shall recommend their final approval. He/She shall also be responsible for certifying parcel maps

and final maps as to their form and content and conformance with the action of the Minor Subdivision Committee or Planning Commission.

(c) Planning Commission. The City Planning Commission shall act as the advisory agency. As such, it is charged with considering investigations and reports on the design of the proposed subdivisions and determining the conformance of the proposed subdivisions to the General Plan and this Chapter. The Planning Commission, having been delegated the authority by the legislative body, has final jurisdiction in the approval of tentative and final subdivision maps; the establishment of standards of design; and the acceptance of lands and improvements that may be proposed for subdivision development, except as may be otherwise provided.

(d) Planning Secretary. The Planning Secretary shall schedule the processing of subdivision maps before the Planning Commission and shall be responsible for the filing of final subdivision maps and parcel maps with the County Recorder.

(e) Other agencies. All agencies which the Deputy City Manager of Plans and Public Works determines may be affected by a proposed subdivision shall, upon receiving copies of such proposed subdivision, expeditiously review it and report to the Deputy City Manager of Plans and Public Works the manner and extent to which the proposal affects such agency. Failure to so report within a reasonable time as specified by the Deputy City Manager of Plans and Public Works shall be deemed approval of the proposal by the agency.

(f) Minor Subdivision Committee. The Minor Subdivision Committee shall review and have the authority to approve, conditionally approve, or disapprove minor subdivisions, as defined herein.

Sec. 33-9. Residential Condominium subdivisions (Ord 3402; 01/08).

A. APPLICATION AND REVIEW REQUIREMENTS. Applications for Preliminary Map and Tentative Map described in Sections 33-51 and 33-57 of this Ordinance shall be required for all residential condominium applications. Condominium project applications shall also require a Master Use Permit and be subject to review by the Planning Commission.

F. TENANT RIGHTS AND PROTECTIONS. Tenant rights and protections are established for residential condominium conversion projects as follows:

1. Tenant Notification.

(a) Ten (10) Day Planning Commission Public Hearing Notice. Each of the tenants of the proposed project has been or will be given written notification at least ten (10) days prior to any required Public Hearing before the Planning Commission in which the Tentative Map is considered for decision. This notification shall clearly indicate that: 1) Public Hearings are held to receive public comment on the application; 2) public comments are welcome and will be carefully considered by the Planning Commission; and 3) the tenant is encouraged to attend the Hearing and comment.

H. LOCAL HOMEOWNERSHIP ASSISTANCE.

3. Other Incentives and Disincentives. The Planning Commission may, at their discretion, establish other incentives and disincentives to achieve the "at least 50%" policy that is identified in Section H above.

L. FINDINGS FOR APPROVAL. The Planning Commission shall not approve a Tentative Map or Final Map for a condominium subdivision unless they find that the project complies with the requirements of State Law and City ordinances as they apply to condominium projects and Use Permits.

M. ADDITIONAL FINDINGS FOR APPROVAL OF CONDOMINIUM CONVERSION PROJECTS. In addition to the required findings of condominium projects described above in Section L, the Planning Commission shall not approve a Tentative Map or Final Map or Parcel Map for a subdivision to be created for the purpose of converting residential real property into a condominium project unless they find all of the following requirements are satisfied:

2. That the proposed conversion, as a total package, will have a beneficial impact upon the provision of a balanced housing mix within the City of Monterey by encouraging owner occupancy and below market rate affordability. In making this finding, the Planning Commission may consider, but need not treat as determinative, the following factors:

Sec. 33-10. Hillside Subdivision.

Where all or any part of a subdivision has an average cross slope in excess of 15%, or where in areas of lesser slope, standard requirements for streets and other improvements would be unduly harmful to unusual or unique features of landform, the Planning Commission may designate all or any part of such land as "hillside areas." When a subdivision, or part thereof, is so designated, hillside improvement standards, as are or may be established by the City Council, may be applied or may be required by the Planning Commission.

Sec. 33-24. Streets and arterials.

The street design of the subdivision shall relate to the pattern of thoroughfares designated in the General Plan and to any other existing or proposed street designs approved by the Planning Commission. Whenever a proposed thoroughfare abuts or traverses a subdivision, such thoroughfare shall be included in the subdivision street design.

Sec. 33-29. Park and recreation dedication and fees.

(e) Credit for private parks. Where private open space for park and recreational purposes is provided in a proposed subdivision or multiple family dwelling project and such space is to be privately owned and maintained, such areas may, in the sole discretion of the Planning Commission, be credited against the requirement of dedication for park and recreational purposes as set forth in subsection (d) hereof or the payment of fees in lieu thereof as set forth in subsection (d) hereof, provided the Planning Commission finds it in the public interest to do so, and that the following standards are met:

1. That yards, court areas, setbacks and other areas required to be maintained by the zoning and building regulations shall not be included in the computation of such private open space, unless such open space is devoted principally to recreational purposes.

2. That the private ownership and maintenance of the open space is adequately provided for by written agreement.

3. That the use of the private open space is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be defeated or eliminated without the consent of the Planning Commission.

4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land.

5. That facilities proposed for the open space are in substantial accordance with the provisions of the recreational element of the General Plan and are approved by the Planning Commission.

6. That the open space and/or facilities will provide for park needs of the residents of the project in such a manner as to reduce the impact on existing facilities or reduce the need to provide new facilities by the City.

Before credit for private open space land is given, the Planning Commission shall make written findings that the above standards are met.

(f) Procedure. At the time of approval of the tentative subdivision map or issuance of the necessary permits for construction of a multiple family dwelling project, the Planning Commission shall determine, pursuant to subsection (d) herein, the land to be dedicated and/or fees to be paid by the subdivider.

Prior to recordation of the final subdivision map or issuance of such necessary permit, the subdivider shall dedicate the land and/or pay the fees as previously determined by the City Council.

Sec. 33-30 Street Names.

The following principles shall govern the naming of streets:

(e) Any street that forms a portion or a continuation or an approximate or logical continuation, of any proposed street which has been previously ordered by the City to be surveyed, opened, widened, improved, and/or named, shall bear the same name as said proposed street.

Sec. 33-31. School site dedications - standard procedure.

(a) Requirements. As a condition of approval of a final map, a subdivider who develops or completes the development of one or more subdivisions within the Monterey Peninsula Unified School District or other elementary or high school districts within the City shall dedicate to the school district such lands as the Planning Commission shall deem necessary for the purpose of constructing thereon schools necessary to assure the residents of the subdivision adequate elementary school service.

Sec. 33-32. School site dedications; conditions of over-crowding.

(a) Requirements. No tentative subdivision map or parcel map for residential purposes shall be approved where the Planning Commission has concurred in a school district's notice of findings that conditions of overcrowding in an attendance area exist unless the Planning Commission makes one of the following findings:

1. That the impact of the proposed development upon the schools servicing the area requires the dedication of land and/or the payment of in-lieu fees by the developer to mitigate such impacts.

2. That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the Planning Commission would benefit the City thereby justifying the approval of a residential development otherwise subject to the interim school facilities dedication provisions of this Section.

(b) School district findings. The governing body of a school district may make findings supported by clear and convincing evidence that:

4. Such other information as may be required by Planning Commission regulation.

(d) City concurrence. After receipt of any notice of findings from a school district complying with the requirement of subsection (c) above, the Planning Commission shall determine whether it concurs in such school district findings. If it concurs with the school district's findings, it shall do so by resolution.

(e) School district schedule. Following the concurrence and decision by the City to require the dedication of land or the payment of fees, or both, for an attendance area, the governing body of the involved school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the Planning Commission and the reason for the modifications.

(h) Procedures.

1. Application filing. At the time of filing an application for the approval of a tentative subdivision map or parcel map located in an attendance area where the Planning Commission has concurred with a school district's finding that conditions of overcrowding exist, the applicant shall, as a part of such filing, indicate whether he prefers to dedicate land for interim school facilities or to pay a fee in lieu thereof, or do a combination of these. If the applicant prefers to dedicate land, he shall indicate the land on the subdivision map.

2. Decision factors. At the time of approval of the tentative subdivision map, the Planning Commission shall determine whether to require a dedication of land within the development, payment of a fee in lieu thereof, or a combination of both. In making this determination, the Planning Commission shall consider the following factors:

(i) Whether lands offered for dedication will be consistent with the General Plan.

(ii) The topography, soils, soil stability, drainage, access, location, and general utility of land in the development available for dedication.

(iii) Whether the location and amount of lands proposed to be dedicated or the amount of fees to be paid, or both, will bear a reasonable relationship and will be limited to the needs of the community for interim elementary and/or high school facilities including all mandated educational programs and will be reasonably related and limited to the need for schools caused by the development.

(iv) Any recommendations made by affected school districts concerning the location and amount of lands to be dedicated.

(i) Use and limits.

1. Use of land and fees. All land or fees, or both, collected pursuant to this Section and transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities including all mandated educational programs.

2. Agreement for fee distribution. Where two or more separate school districts operate schools in an attendance area where the Planning Commission concurs that overcrowding conditions exist for both school districts, the Planning Commission will enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this Section.

3. Fee fund and land records and reports. Any school district receiving funds or land pursuant to this Section shall maintain a separate account for any fees paid and disposition of land received and shall file a report with the Planning Commission on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1 of each year and shall be filed more frequently at the request of the Planning Commission.

Sec. 33-36. Transit Facilities.

(a) A subdivider shall be required to dedicate land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items which directly benefit the residents of a subdivision if:

1. The subdivision as shown on the tentative map has the potential for 200 dwelling units or more if developed to the maximum density shown on the General Plan, or contains 100 acres or more.

2. The Planning Commission finds that transit services are, or will within a reasonable time period, be made available to such subdivision.

(b) The provisions of this Section do not apply to condominium projects which consist of the subdivision of air space in an existing apartment building which is more than five years old and where no dwelling units are added.

Sec. 33-38. Waiver of Direct Access to Streets.

Whenever the Planning Commission finds a safety hazard would be created as a result of direct access to a street, the Planning Commission may impose a requirement that any dedication or offer of dedication of a street shall include a waiver of direct access rights to such street from any property shown on a final map as abutting thereon, and that if the dedication is accepted, such waiver shall become effective in accordance with the provisions of the waiver of direct access.

Sec. 33-39. Public Access to Public Resources.

(c) Reasonable access, as used in this Section, shall be determined by the Planning Commission. In making the determination of what shall be reasonable access, the Planning Commission shall consider:

1. That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

2. The size of the subdivision.

3. The type of coastline or shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, diving, sunbathing, surfing, walking, swimming, boating, fishing, beach-combing, taking of shellfish, water skiing, scientific exploration, and teaching.

4. The likelihood of trespass on private property and reasonable means of avoiding such trespass.

(d) Nothing in this Section shall require the City to deny either a tentative or final map solely on the basis that the reasonable access otherwise required by this Section is not provided through or across the subdivision itself, if the Planning Commission makes a finding that such reasonable access is otherwise available within a reasonable distance from the subdivision. Any such finding shall be set forth on the face of the tentative or final map.

(e) Nothing in this Section shall be construed as requiring the subdivider to improve any route or routes which are primarily for the benefit of nonresidents of the subdivision area.

Sec. 33-41. Mobile home Parks.

(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobile home park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

(b) The subdivider shall make a copy of the report available to each resident of the mobile home park at least 15 days prior to the hearing on the map by the Planning Commission.

(c) The Planning Commission may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

Sec. 33-42. Optional design and improvement provisions.

Where a subdivider, by written affirmation, signifies his intent to enhance the livability, appearance, health, safety, convenience, or general welfare of his proposed subdivision by using new concepts in the arrangement, size or shape of lots, internal and external circulation, facilities and patterns to serve the lots and the adjacent neighborhood, the standard design and improvement regulations may be modified by the Planning Commission upon making the finding and determination that the development as proposed will provide:

Sec. 33-43. Variances based on hardship.

There may be certain parcels of land of such dimensions, or which are subject to such title restrictions, or are so affected by physical conditions or devoted to such uses, or planned developments that it is impossible or in some cases undesirable for the subdivider to conform to all of the requirements of this Chapter and related regulations when subdividing property.

The Planning Commission may grant deviations from the foregoing requirements when all the following conditions are found to apply:

(a) That any deviation granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity.

(b) That because of special circumstances applicable to the subject property, including size, shape, topography, location, surroundings or unusual title limitations of record, or applicable to particular densities or features of a planned community, the strict literal application of this Chapter is found to be unreasonable or undesirable.

(c) That under the circumstances of this particular case, the deviation, rather than the Sections at issue in this Chapter, actually carries out the spirit and intent of this Chapter and the goals and policies of the General Plan for the City of Monterey.

(d) That adequate guarantees shall be provided to insure that any conditions imposed as a part of any approved deviation shall be carried out as specified.

Provided, however, that no such deviation may be granted by the Planning Commission if such is in conflict with the Zoning Ordinance, Building, Fire or other such Uniform Codes or ordinances unless and until such variances or exceptions as are provided for therein have been approved under the procedures established by such Codes or ordinances.

Sec. 33-47. Revocation of approvals.

If no lots in a subdivision for which a final map has been approved and recorded have been sold within five years of the effective date of this Chapter; or if none of the improvements required to have been made have been installed within two years of the date of recordation, the Planning Commission may, after a public hearing, revoke the final approval of the subdivision and the land shall return to its former undivided state. Such revocation of final approval shall be made without prejudice to the filing of another subdivision map.

Sec. 33-52. Action on preliminary map.

The Deputy City Manager of Plans and Public Works shall review the preliminary map and within ten days of its receipt shall schedule a meeting with the subdivider and/or his engineer to make general recommendation with respect to the proposed subdivision; and to recommend consultations with other public or private agencies as may be necessary or advisable. Within ten days after such recommendations; consultations and meetings, the Deputy City Manager of Plans and Public Works shall notify the subdivider in writing of the final determination as to the preliminary map and whether or not an EIR is required on the tentative map.

Sec. 33-53. Timing.

Within 90 days of the date of the Deputy City Manager of Plans and Public Works action on the preliminary map, the subdivider shall prepare and file a tentative map of the proposed subdivision. If an EIR is required, the subdivider shall also provide the required deposit for the City's preparation of an EIR. Failure to file the map within this time period shall invalidate any reports, recommendations or actions of the Deputy City Manager of Plans and Public Works with respect to the preliminary map and, should the subdivision be resubmitted for consideration, a new preliminary map shall be filed in accord with the above procedures unless the Deputy City Manager of Plans and Public Works shall determine that the original preliminary map is still valid and adequate.

Sec. 33-58. Requirements for an EIR.

When determined necessary by the Deputy City Manager of Plans and Public Works , a draft environmental impact report (EIR) shall be completed by the City consistent with the City's CEQA Guidelines and filed with the tentative map.

Sec. 33-59. Action on Tentative Maps.

(a) Deputy City Manager of Plans and Public Works action. After receipt of the application and other information required from the subdivider, the Deputy City Manager of Plans and Public Works shall consult with the City Engineer and other concerned City departments to determine if the application can be accepted for official filing.

If additional information is needed, the subdivider shall be notified what information is required. If the application is determined to be acceptable for official filing, the Deputy City Manager of Plans and Public Works shall date and file the tentative map.

The acceptance of an application for official filing is not a determination that the application is officially complete. An application for a tentative map is officially complete when the public hearing on the map by the Planning Commission is closed, or at such time as determined by the Commission if additional information is needed.

After acceptance of an application for official filing, the Deputy City Manager of Plans and Public Works shall transmit copies of the map, together with accompanying data, to all concerned agencies and shall cause notice of the proposed tentative map to be made within the Zone of Influence in accord with the standard procedures of the Planning Office.

One copy of the tentative map shall be forwarded to the Monterey County Planning Department, and to the Deputy City Manager of Plans and Public Works or other designated official of each city, a portion of which lies within three miles of the Monterey City limits and which has requested such referral for their review and recommendation.

(b) Subdivision conference. Within 14 days of the filing of the complete application and prior the Planning Commission review, the Deputy City Manager of Plans and Public Works shall hold a subdivision conference with the subdivider and representatives of the concerned agencies to discuss said subdivision. Failure of any concerned agency to participate in said conference or to report regarding the proposed subdivision shall be deemed to be approval of the map on their part.

(c) Report and recommendation. Following the subdivision conference, the Deputy City Manager of Plans and Public Works shall prepare a written report and recommendation for the consideration of the Planning Commission at its next regular meeting. Copies of the report and recommendation shall be sent to the subdivider and each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative, at least three days prior to any hearing on the map. Fees may be collected from the subdivider for expenses incurred under this section.

(d) Public Hearing Notice

1. The Planning Commission shall hold a public hearing on the tentative subdivision map and notice of the time and place thereof, including a general description of the location of the proposed subdivision, shall be given at least 10 days before the hearing. Such notice shall

be given by publication once in a newspaper of general circulation in the City of Monterey. Notice shall also be mailed to all property owners within 150 feet of the boundaries of the proposed subdivision, as shown on the latest equalized County assessment roll, at least 10 days before the hearing. Any interested person may appear at such a hearing and may be heard.

2. In addition to the notice required in (1) above, whenever approval of a tentative map might reasonably constitute a substantial or significant deprivation of the property rights of other landowners, the local agency shall provide notice of the application to all persons, including businesses, corporations, or other public or private entities, shown on the last equalized assessment roll, as owning real property within 300 feet of the property which is the subject of the application. Notice may be given by any method reasonably calculated by the City to provide actual notice of the hearing.

(e) Planning Commission action. Following the receipt of the Deputy City Manager of Plans and Public Works' report on the tentative map, staff shall set a date for a public hearing on the map, which date shall be within 30 days thereafter. The Planning Commission shall approve, conditionally approve, or disapprove the tentative map, and certify the final EIR, if required, within such 30 day period, unless this period is extended by mutual agreement between the subdivider and the City. Notice of the public hearing shall be given in the same manner as required for the hearing by the Planning Commission.

(f) Notification. Within ten days of the action taken by the Planning Commission, the Planning Secretary shall notify the subdivider or his designated agent in writing of the action taken by the Planning Commission, attaching one copy of the map and one copy of the Planning Commission resolution relating thereto; and shall forward one copy of the resolution to the Planning Commission for its permanent files and records.

Sec. 33-60. Expiration of Tentative Map approval.

(a) Within 18 months after approval or conditional approval of the tentative map by the Planning Commission, the subdivider shall cause the subdivision, or a part thereof, to be surveyed and a final map to be filed with the City Engineer in accordance with the tentative map as approved or conditionally approved.

(b) The subdivider may request an extension of time on the expiration date of the tentative map by written application filed with the Deputy City Manager of Plans and Public Works. The Deputy City Manager of Plans and Public Works shall review the request and submit it together with a report to the Planning Commission.

(c) After reviewing the recommendation of the Deputy City Manager of Plans and Public Works, the Planning Commission shall approve, conditionally approve, or deny the request for extension of time. The approved extension of time shall not exceed 12 months.

(d) Failure of the subdivider to file a final map with the City Engineer within 18 months, or within an additional period of time approved by the Planning Commission, shall terminate all proceedings on the map. No further action shall be taken by the City without the filing of a new tentative map to be processed in accordance with the procedures of this Article.

(e) Final action approving, conditionally approving, or denying the final map shall be

taken by the Planning Commission within 30 months of the original approval of the tentative map by the Planning Commission.

SECTION 2: Monterey City Code City Code Chapter 37 (Preservation of Trees and Shrubs) is hereby amended as follows:

Section 37-10 Processing of permits; standards for permits.

Permits are required to be approved before a protected tree may be removed. The City Forester shall review and approve removals that are based on tree health and / or safety considerations. All other removals, such as those necessary to accommodate new development or building expansions will require review and approval of the Department of Plans and Public Works. Permit requirements, review procedures and standards for issuing permits are as follows:

A. Application. A person who desires to move or remove a protected tree on any private parcel shall secure a permit from the City on an application provided by the City, accompanied by the required fee. The application shall contain the number, species, size, and location of the tree or trees involved, a statement of the reason for the requested action, and any other pertinent information determined necessary by the City Forester.

SECTION 3: Monterey City Code City Code Chapter 38 (Zoning) is hereby amended as follows:

Section 38-22.D RE District Property Development Standards (footnote g):

g. Excluding up to 250 square feet of a garage that is not occupied by any appliance, equipment, mechanical system, work bench, or built-in fixture, carports, decks, uncovered patios, and landscaping areas.

Section 38.23.D R-1 District Property Development Standards (footnote g)

g. Excluding up to 250 square feet of a garage that is not occupied by any appliance, equipment, mechanical system, work bench, or built-in fixture, carports, decks, uncovered patios, and landscaping areas.

Section 38-153 Duties of the Deputy City Manager of Plans and Public Works

A. The Deputy City Manager of Plans and Public Works shall be responsible for administration of the development review process and shall coordinate work of Department staff and the Development Review Committee. The Deputy City Manager of Plans and Public Works shall refer projects to appropriate commissions and committees for review and comment as required by this ordinance. Discretionary permits shall be issued upon determination by the appropriate reviewing body that the proposed use or structure complies with this ordinance and that development review, architectural review and environmental review and documentation, if any, required by the California Environmental Quality Act (CEQA) is complete.

B. Administrative Approval. The Deputy City Manager of Plans and Public Works may administratively approve over the counter minor projects that do not require a public hearing.

C. Zoning Administrator Approval. The Deputy City Manager of Plans and Public Works, or designee, acting as Zoning Administrator, may hold a public hearing and consider the following Use Permits and variances:

1. Use Permits for Guest houses on lots 8,000 square feet or greater in size.
2. Use Permits for minor commercial uses where the finding can be made that the use will not create parking adjustments more than five (5) spaces.
3. Use Permits for commercial communication facilities with large antennae (satellite antennae over 12') above ground and microwave receiving antennae and microwave transmitting and relay equipment) which do not create significant visual impacts.
4. Use Permits for non-formula Fast Food Restaurants.
5. Use Permits for change of use in existing buildings.
6. Variances for setbacks for residential applications that meet criteria a. and b. and either c. or d. below:
 7. Variances for side and rear yard setbacks for residential applications for hot tubs and gazebos that meet criteria a. below.
 - a. That the Variance will not be detrimental or injurious to property or improvements in the vicinity of the development site (e.g. no privacy impacts on adjacent property).
 - b. That any side yard setback Variance for a residential structure shall not result in a side yard setback of less than three (3) feet and any front or rear yard setback Variance for a residential structure shall not result in a front or rear yard setback of less than ten (10) feet.
 - c. That there is a physical hardship with one of the following:
 - i. the topography of the site; or,
 - ii. trees or rocky outcroppings on the site or in the immediate vicinity; or,
 - iii. the irregular, non-rectangular shape of the site; or,
 - iv. the non-conforming lot width/lot depth dimensions of the site; or,
 - v. the location of existing structures on site.
 - d. That there are special circumstances of:
 - i. a single story addition is proposed to an existing residential structure having an existing non-conforming setback; and,
 - ii. the Variance is to allow a single story addition to match the existing non-conforming setback.
9. Variances for fence heights where one or more of the following determinations can be made and that meet the criteria in 7.c. above.

- a. There is significant grade difference where the house is lower than the street; or
- b. The property adjoins or is across from a commercially zoned property; or
- c. The fence does not appear as a visual barrier and does not impede the sight line for vehicles.

10. Variances for fence and wall heights above 6 feet adjacent to Highway 1 where all of the following determinations can be made.

a. The property is located directly adjacent to Highway 1 and it is located in a residential zoning district and the use is residential.

b. The fence or wall height above 6-foot is intended, as demonstrated by the proposed height and design, to provide a solid barrier and reduce the transfer of sound between Highway 1 and the residential property.

c. The appearance of the fence or wall as viewed from Highway 1 will not detract from the aesthetic appearance of the Highway.

d. An earth berm and landscaping are incorporated into the plan to reduce the perceived height of the fence or wall.

e. The maximum height of the fence or wall does not exceed 10 feet above the existing grade.

f. The fence or wall that exceeds 6 feet in height must be able to conform to all requirements of the Building Division and receive a building permit prior to installation.

11. Variances for building projections into yards.

12. Variances for Accessory Building height, setbacks and coverage in rear yard setbacks.

13. Variances for exceptions to height limits for church spires, cupolas, monuments, water towers, fire and hose towers, chimneys, elevators and other structures.

14. Variances for building separation.

15. Variances for paving and parking in residential front yard setbacks.

16. Minor enforcement items as determined by the Deputy City Manager of Plans and Public Works.

17. Expansion of non-conforming single family residential structures by adding not more than 10% of the existing habitable floor area.

18. Other minor Use Permits or variances as determined by the Deputy City Manager of Plans and Public Works.

Section 38-157 Authority of Planning Commission

The Planning Commission shall approve, conditionally approve, or disapprove applications for Use Permits or variances which are consistent with the General Plan, subject to the general purposes of this ordinance, the specific purposes of the base or overlay zoning district in which a development site is located, and the provisions of this chapter, unless authority for a decision on a Use Permit or variance is specifically assigned to the Deputy City Manager of Plans and Public Works in the individual chapters of this ordinance.

Section 38-159.B Notice and Public Hearing.

A. Public Hearing Required. The Planning Commission or the Deputy City Manager of Plans and Public Works, as the case may be, shall hold a public hearing on an application for a Use Permit or Variance in a timeframe as set forth by the Permit Streamlining Act.

Section 38-26 Supplemental Regulations Applicable in R Districts

G. Home Occupations.

1. Purpose. A home occupation is a business activity conducted in a residential unit that is clearly subordinate and secondary to the primary residential use of the unit. The purpose of the home occupation provision is to allow for minor business activities in residences in such a manner as to be compatible with their neighborhood.

2. Procedure. The procedure for processing of home occupations shall include:

a. Application by the property owner or agent of the owner to the Department of Plans and Public Works on a form prescribed for that purpose by the City of Monterey that includes submittal requirements developed, maintained, and adopted by the Department of Plans and Public Works and made available to the public at City Hall.

b. Payment of a filing fee as established by resolution of the City Council.

c. Review by the Department of Plans and Public Works to determine if the application is complete and appropriate. If deemed incomplete, the Department of Plans and Public Works shall notify the applicant what additional information is required.

d. A decision by the Department of Plans and Public Works to approve, approve with conditions, or deny the application within 14 days of the application being deemed complete.

e. Department of Plans and Public Works will mail notice to adjacent property owners and tenants indicating the action taken and providing 10 days from the date the notice was mailed for filing an appeal of the decision.

f. The decision may be appealed to Planning Commission. The notice of appeal shall be in writing and shall be filed in Department of Plans and Public Works on forms provided by the City.

SECTION 4: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: This Ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 5th day of May, 2009, by the following vote:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Selfridge, Sollecito
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

APPROVED:



Mayor of said City

ATTEST:



City Clerk thereof



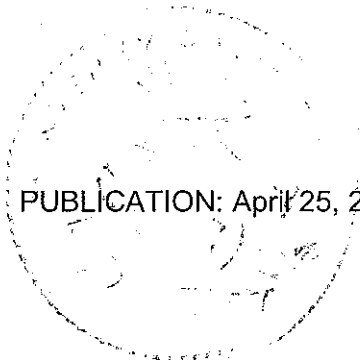
STATE OF CALIFORNIA
COUNTY OF MONTEREY
CITY OF MONTEREY

I, Bonnie L. Gawf, CITY CLERK OF THE CITY OF MONTEREY, AND EX-OFFICIO CLERK OF THE COUNCIL THEREOF, HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS DULY PASSED TO PRINT IN THE OFFICIAL NEWSPAPER OF SAID CITY BY THE COUNCIL THEREOF ON THE 21st DAY OF April, 2009 BY THE FOLLOWING VOTE:


AYES: 5 COUNCILMEMBERS: Della Sala, Downey, Haferman, Selfridge, Sollecito

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None



PUBLICATION: April 25, 2009


CITY CLERK OF SAID CITY