

**ORDINANCE NO. 3442 C.S.**

**AN ORDINANCE OF THE CITY OF MONTEREY TO REPEAL AND REENACT MONTEREY CITY CODE SECTION 22-29 (REGULATION OF SMOKING IN PUBLIC PLACES) AND REPEAL OF CHAPTER 22, ARTICLE 3, OF THE MONTEREY CITY CODE (SMOKING REGULATIONS)**

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

SECTION 1: Monterey City Code, Chapter 22-29 is hereby repealed in its entirety and reenacted as follows:

Sec. 22-29. Regulation of smoking in public places.

(a) Definitions: The following words and phrases, whenever used in this section, shall be construed as defined in this section:

1. "Beach" means any sand area of a public park within the City of Monterey that abuts the Monterey Bay and extends to the Recreation Trail.

2. "Employment" shall be defined as in California Labor Code section 6303(b).

3. "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress.

4. "Place of Employment" is any place where "employment" is carried on.

5. "Open to the public" means any area to which the public is invited or in which the public is permitted, including, but not limited to, common areas within hotels and motels, pharmacies, banks and other financial institutions, offices, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, sports pavilions, boxing arenas, restaurants, bars, aquariums, museums, galleries and retail stores.

6. "Recreation Trail" means the paved bicycle and pedestrian path which extends from the Monterey Bay Aquarium to the City of Seaside's limits.

7. "Smoke" or "smoking" means possessing any lighted pipe, lighted cigar, or lighted cigarette of any kind, including, but not limited to, tobacco, any weed or plant, or any other similar combustible substance in any manner or in any form.

8. "Service Area" means any outdoor area in which one or more persons are waiting for or receiving service of any kind, including, but not limited to, automatic teller machines (ATMs), ticket lines, bus stops, and boarding and waiting areas of public transit depots.

(b) Smoking is prohibited in the following places located within the City of Monterey except as provided in Section 22-29(c):

1. Beaches.
2. The Recreation Trail.
3. Buildings: All enclosed areas of buildings which are open to the public.
4. Covered public parking lots and the parking areas, including stairwells.
5. Buses, taxicabs, shuttles, and other means of public transportation operating in the City of Monterey.
6. Service areas.
7. City owned vehicles.
8. Where any person or entity that either owns or exercises management and control over the property and has declared the area, where smoking would otherwise be allowed, to be a non-smoking area and posts "No Smoking" signs as described in Section 22-29(d) below.
9. Enclosed places of employment.

(c) Exceptions. Smoking may be permitted in the following locations unless otherwise prohibited by State law:

1. Theatrical production sites, if smoking is an integral part of the story in the theatrical production.
2. Patient smoking areas in long-term health care facilities, as defined in California Health and Safety Code section 1418.
3. Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.
4. 65% of hotel and motel guest rooms per California Labor Code section 6404.5(d)(1).
5. Private residences, except for those licensed as family day care homes during hours of operation and in those areas where children are present.

(d) Posting of Signs.

1. "No Smoking" signs shall be clearly and conspicuously posted in every building or other place where smoking is regulated by this chapter by the owner, operator, a manager or other person having control of such place where smoking is regulated by this Section.

(e) Penalties for violation.

1. No person shall smoke where smoking is prohibited by this Section.
2. It shall be unlawful for any person who owns, manages, operates, or otherwise

controls the use of any place subject to the restrictions and regulations of this Section to permit or allow smoking in violation of this Section.

3. Any person who violates Section 22-29(b)(1)-(10) shall be guilty of a misdemeanor, punishable as set forth in Section 1-7 of this code. In addition, each and every such violation shall be subject to the administrative citation process set forth in Article 2, Chapter 1, of this code.

4. To the extent that Section 22-29(b)(11) is duplicative of Labor Code section 6040.5, any enforcement shall be pursuant to the Labor Code. To the extent that Section 22-29(b)(11) is not duplicative of Labor Code section 6040.5, it shall be enforced pursuant to Section 22-29(e)(3).

5. Any person smoking where smoking is prohibited by this Section shall constitute a public nuisance.

6. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Section shall also constitute a violation.

SECTION 2: Monterey City Code Chapter 22, Article 3 is hereby repealed in its entirety.

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: 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 2nd day of February, 2010 by the following vote:

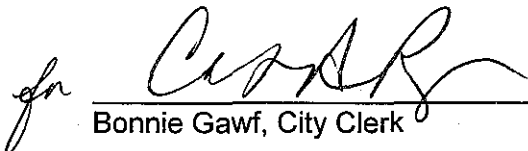
AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Selfridge, Sollecito
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NOES:	0	COUNCILMEMBERS:	None
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ABSENT:	0	COUNCILMEMBERS:	None
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ATTEST:

APPROVED:


  
Bonnie Gawf, City Clerk

  
Chuck Dela Salla, Mayor

STATE OF CALIFORNIA  
COUNTY OF MONTEREY  
CITY OF MONTEREY

I, Catherine A. Raynor, SENIOR ASSISTANT 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 19<sup>th</sup> DAY OF January, 2010 BY THE FOLLOWING VOTE:

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

  
CITY CLERK OF SAID CITY

PUBLICATION: January 23, 2010