

ORDINANCE NO. 3472 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**2012 OMNIBUS ORDINANCE AMENDING SPECIFIC SECTIONS OF THE
MONTEREY CITY CODE**

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

SECTION 1: The Monterey City Code shall be amended to reflect the following new departmental and division titles. Changes indicated in this section do not supersede changes noted in other sections of this Omnibus Ordinance.

- a. All references to "Deputy City Manager Plans and Public Works" shall be replaced with "Public Works Director" with the first instance in each chapter of the code to be replaced with "Public Works Director as defined in § 38-11.
- b. All references to the "Public Facilities Director" shall be replaced by the single departmental title of "Director of Community Services" wherever such titles may appear in the City Code.
- c. All references to the "Recreation & Community Services Director" shall be replaced by the single departmental title of "Community Services Director" wherever such titles may appear in the City Code.

SECTION 2: Monterey City Code, Chapter 1, § 1-7.1, is hereby amended to read as follows:

"Sec. 1-7.1 Liability for Costs

Any person against whom a civil action is filed for violation of any provision of this Code shall be liable for the costs thereof, which shall include but not be limited to the costs of investigation, court costs, attorney's fees, and costs of monitoring compliance. This section does not apply to the recovery of attorney's fees in a nuisance abatement action or proceeding, for which the recovery of attorney's fees is authorized under Monterey City Code § 22-38.6."

SECTION 3: Monterey City Code, Chapter 1, § 1-11.1 through 1-11.4 are hereby amended to read as follows:

"Sec. 1-11.1 Number of members

The Board shall consist of three members, one alternate member, and two disabled access members, with disabled access members attending Appeals Hearing Board meeting only where the appeal relates to access to public accommodations by physically disabled persons.

Sec. 1-11.2 Special eligibility requirements

Two members shall be experienced in planning and zoning issues or shall have experience in the building trades or in building inspection, one member shall be a member of the public, and in accordance with California Health & Safety Code § 19957.5 two members shall be physically disabled.

Sec. 1-11.3 Functions, powers and duties

The Board shall have the following functions, powers, and duties:

- A. Hear all administrative hearings and appeals authorized by this Code or by ordinance;
- B. Conduct all administrative abatement action hearings authorized by this Code or by ordinance;
- C. Authorize the imposition of liens, assessments, special collection or other collection process against a responsible party any affected property, as appropriate;
- D. Perform such other programs or functions related to administrative hearings and appeals that the City Council or the City Manager may, from time to time, authorize or request.
- E. Hear appeals regarding actions taken by the Plans and Public Works Department regarding enforcement of laws relating to access to public accommodations by physically disabled persons.

Sec. 1-11.4 Appointment/Term

Members of the Board shall be appointed by the City Council upon recommendation or nomination by the City Manager or his or her designated representative, and shall serve two-year terms.”

SECTION 4: Monterey City Code, Chapter 5, § 5-31 paragraph b.5 is hereby amended to read as follows:

“(5) At the hearing, the City Manager may consider such documentary or unsworn oral testimony as the permittee wishes to submit. He may also consider the fact of a conviction for violation of this Article. Upon consideration of the information submitted, the City Manager may uphold or withdraw the revocation, or may make reasonable rules for the conduct of the bingo games held by the permittee to avoid future violations. The City Manager shall notify the permittee

in writing of his decision and file a copy of said decision with the Finance Department. The decision shall become final unless appealed to the City Council within ten days of the written determination of the City Manager.”

SECTION 5: Monterey City Code, Chapter 6, § 6-10 is hereby amended to read as follows:

“Sec. 6-10. Dogs running at large prohibited.

It shall be unlawful for any person having the charge, care, or control of any dog, whether licensed and vaccinated or not, to suffer or permit any such dog to run at large on any public or private property within the City

All dogs shall be deemed running at large within the meaning of this Section unless led or restrained by a chain, strap, rope, or cord attached to their collars or harness and actually held by some person or made fast to some stationary object.

This Section does not apply to police dogs or dogs used by the City to control wildlife in public areas, during the time such dogs are engaged in these permitted activities. In addition, this Section does not apply to dogs located on private property enclosed by a fence or similar structure of which the owner of the dog has lawful possession, ownership or control, nor shall it apply to Dog Parks.”

SECTION 6: Monterey City Code, Chapter 12, § 12-2 paragraph d is hereby amended to read as follows:

“(d) Before entering upon his duties, to take the oath of office provided for in the Constitution of the state and either (i) to file with the City Clerk an official bond in the amount to be set from time to time by the Finance Director for the faithful performance of his duties, payable to the City or (ii) be covered by a public employee dishonesty/crime policy of insurance with limits as established by the Finance Director. Such bond or insurance shall be to the satisfaction of the Finance Director. The premium of such bond or insurance shall be paid by the City.”

SECTION 7: Monterey City Code, Chapter 19, § 19-16 Approval of Application for Peddler’s Licenses is hereby deleted and all references to it are removed from the Municipal Code.

SECTION 8: Monterey City Code, Chapter 19, § 19-102, paragraph d is hereby amended to read as follows:

“(d) General overhead, expressed as a percentage, distributing and charging the expenses of the City Council, City Attorney, City Manager, Information Resources Department/City Clerk, Finance Department, Personnel Office, and City Promotion, and all other staff and support service provided to the entire City organization. Overhead shall be prorated between tax-financed services and fee-financed services on the basis of said percentage so that each of taxes and fees and charges shall proportionately defray such overhead costs.”

SECTION 9: Monterey City Code, Chapter 22, § 22-5 through 22-7 are amended to read as follows:

“Sec. 22-5 Definitions for Curfew Regulations

For purposes of this Division, the following definitions apply:

Curfew Hours means the period from 11:00 p.m. any evening of the week, until 5:00 a.m. the following day.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life. “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Establishment means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian means (1) a person who, under court order, is the guardian of a minor, or (2) a public or private agency with whom a minor has been placed by the court, or (3) a person who is at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Minor means any person under eighteen (18) years of age.

Parent means a person who is a natural parent, adoptive parent, or step-parent of a minor.

Public place means any place to which the public has access and includes, but is not limited to, streets, roads, alleys, trails, sidewalks, parks, recreational areas, public grounds or buildings, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

Responsible Adult means a person at least eighteen (18) years of age, authorized by a parent or guardian to have the care and custody of a minor.

Sec. 22-6 Curfew Regulations

- (a) It is unlawful for any minor to be present in any public place or on the premises of any establishment within the City of Monterey during curfew hours.
- (b) It is unlawful for any parent or guardian of a minor knowingly to permit, or by insufficient control to allow the minor to be present in any public place or on the premises of any establishment within the City of Monterey during curfew hours.
- (c) It is a defense to prosecution under section 22-6(a) or (b) that the minor was:
 - (1) accompanied by the minor's parent or guardian, or by a responsible adult;
 - (2) on an errand at the direction of the minor's parent or guardian, or the responsible adult, without any detour or stop;
 - (3) in a motor vehicle involved in interstate travel;
 - (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) involved in an emergency;
 - (6) on the sidewalk abutting the minor's residence;
 - (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Monterey, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Monterey, a civic organization, or another similar entity that takes responsibility for the minor;
 - (8) exercising First Amendment rights protected by the United States Constitution, or going to or returning home from, without any detour or stop, the exercising of those First Amendment rights;
 - (9) traveling from an activity listed in section 22-6(c) to another activity listed in section 22-6(c), without any detour or stop; or
 - (10) emancipated pursuant to law.
- (d) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place or on the premises of the establishment during curfew hours. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any responses and other circumstances, no defense under section 22-6(c) is present or applicable.
- (e) Each violation of this section shall constitute a separate offense.

Sec. 22-7 Penalty

Any person violating the provisions of section 22-6 may be charged with a misdemeanor. Minors shall be dealt with in accordance with juvenile court law and procedure."

SECTION 10: Monterey City Code, Chapter 22, § 22-31, paragraph h is hereby amended as follows:

(h) Hearing/Appeal. Any person who has been denied a Massage Business or Establishment permit, or any person whose privilege to conduct a Massage Business or Establishment has been suspended, revoked, or restricted, may request a hearing conducted by the City Manager's office. The request for a hearing must be in writing and must be made within 10 calendar days from the date of the decision to deny, suspend, revoke, or restrict the permit. Upon receiving a written request for a hearing, the City Manager or his or her delegate shall call a hearing within 14 days thereafter, and shall set forth in writing and send to the applicant or permittee, by means of registered mail, certified mail, or hand delivery, notice of the date, time and place of the hearing at least five days before the hearing date. The hearing shall be conducted to determine the existence of any facts which constitute grounds for the denial, suspension, revocation, or restriction of the Massage Business or Establishment. A full hearing, in accordance with the applicable principles of due process, shall be conducted by a hearing officer appointed by the City Manager. The Police Chief shall call witnesses and present evidence to establish by a preponderance of the evidence that the privilege to conduct a Massage Business or Establishment should be denied, suspended, revoked, or restricted. The Massage Business or Establishment may appear by counsel and shall have the right to present evidence and cross-examine the witnesses. In the event that the Massage Business or Establishment fails to appear at the hearing, the evidence of the existence of facts which constitute grounds for the denial, suspension, revocation, or restriction of the permit shall be considered conclusively established. A copy of the decision of the hearing officer specifying the reasons for the decision shall be furnished to the Massage Business or Establishment. The decision of the hearing officer shall be final.

Notwithstanding the foregoing, the Police Chief may immediately suspend a Massage Business or Establishment without a prior hearing if he or she determines that the continued provision of massage services constitutes an immediate and significant threat to the public health, safety or welfare. In such a case, the City Manager or his or her delegate shall conduct the hearing following the suspension.

SECTION 11: Monterey City Code, Chapter 22, § 22-38.2 is hereby amended to add paragraph r as follows:

"(r) Any business or use of property in violation of the City's Municipal Code."

SECTION 12: Monterey City Code, Chapter 22, § 22-38.6 is hereby added to read as follows:

"Sec 22-38.6 Liability for Costs

In any action, administrative proceeding, or special proceeding to abate a nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees. The recovery of attorneys' fees by the prevailing party shall be limited to those actions or proceedings in which the City elects, at the initiation of that action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding."

SECTION 13: Monterey City Code, Chapter 23, § 23-8 paragraph 5 is hereby amended to read as follows:

"(5) Any area specifically designated by written authorization from the Community Services Director.

Dogs and other animals permitted in the above-listed areas must be on a leash, no longer than six feet (6') and which must be held by a person or made fast to some stationary object at all times. Pursuant to § 6-16.6 of this Code, any excrement deposited by the animal must be promptly removed.

Leashed or harnessed guide dogs for the blind or visually impaired, signal dogs for the deaf or hearing impaired, or service dogs for individuals with any other disability are excepted from this section and shall be permitted in all park and recreation areas. Harnessed or unharnessed police dogs and dogs used by the City to control wildlife in public areas, during the time such dogs are engaged in these permitted activities and are under the control of their owner or trainer, are excepted from this section and shall be permitted in all park and recreation areas."

SECTION 14: Monterey City Code, Chapter 25, § 25-2.14 is hereby amended to read as follows:

- a. City Manager
- b. Assistant City Manager
- c. City Attorney
- d. Finance Director
- e. Fire Chief
- f. Library Director
- g. Community Services Director

- h. Human Resources Director
- i. Police Chief
- j. Director of Information Resources/City Clerk

SECTION 15: Monterey City Code, Chapter 28, § 28-26 and 28-27 are hereby added to read as follows:

“Sec. 28-26. Bidder Protests.

Bid protest procedures are set forth in the City’s Purchasing Manual, Chapter 28, § 28-26. Any protest shall be accompanied by bid protest filing fee of ninety-five dollars (\$95.00). Such protest fee is non-refundable except in the instance where protestor prevails in the protest, City engaged in a processing error, or the call for bid documents are ambiguous.

Sec. 28-27. Bidder Protest Procedures.

The following procedures shall apply to bidder protest(s):

- a. Grounds for protest. Authority to protest shall be limited to bidding vendors. A written protest may be filed based on the following grounds:
 - i. Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents .
 - ii. Such other grounds as would create a cause of action at law or in equity.
- b. Bidder protests must be submitted, in writing, prior to award of contract and within five (5) business days after the date aggrieved bidder knew or should have known of the facts giving rise to the bid protest award. Such protests may be filed immediately after the bid opening. Protests will be accepted in person or via mail, either delivery shall be to City of Monterey, Finance Administration, 735 Pacific Street, Suite A, Monterey, CA 93940 so long as accompanied by the bid protest filing fee as specified in City Code § 28-26. Once the bid protest package has been received, follow-up communications in reference to the bid protest may be made to the Finance Department by telephone, fax, or email.

The written formal protest must contain the following:

- i. Identification of the specific City Purchasing Code (Chapter 28) or other statutory or regulatory provision(s) that the buyer or department is alleged to have violated;
- ii. Description of each act alleged to have violated the statutory or regulatory provisions(s) identified above;
- iii. A precise statement of the relevant facts that includes dates, timelines and involved parties, and all supporting documents. Supporting documentation not submitted within the five (5) business days described in subsection (b) above may not be reviewed;

- iv. An identification of the issue(s) that need to be resolved that support the protest;
 - v. A statement of the form of relief requested.
- c. If a timely protest is filed, Finance Administration shall notify the involved department(s) and any further action related to the bidding process shall be suspended until a determination is made on the merits of the protest.
- d. Finance Administration will conduct an investigation, gather information, prepare documentation of its findings and make every effort to resolve the protest to the mutual satisfaction of all stakeholders. If the protest cannot be mutually resolved, Finance Administration will make a decision as to the protest and so inform the involved department(s). The department(s) or Finance Administration will then notify the protest bidder(s), in writing.
- e. The notice to the protester shall state the basis of bidder's protest(s), the results of the investigation, findings, recommendation(s) and reasons for the action taken and delivered, in writing, to the protesting bidder(s).
- f. Bidders may appeal, in writing, to the City Manager within five (5) business days of receipt of the written notification. The City Manager or Acting City Manager shall have five (5) business days to make a decision which shall be final."

SECTION 16: Monterey City Code, Chapter 28, § 28-78 is hereby amended to read as follows:

"Sec. 28-78 Disqualification.

If the City finds that a contractor to whom a City contract for public works has been awarded, or a subcontractor listed by contractor on a public works project, has failed to comply with the good-faith hiring provisions of § 28-73(b) during the performance of the contract, the City may disqualify the contractor and/or subcontractor from bidding or being listed in any bid on any City contract for public works for a period of one (1) year from the date of the City's disqualification for a period of three (3) years. The Finance Department shall keep a current list of all disqualified contractors and subcontractors on file."

SECTION 17: Monterey City Code, Chapter 30, § 30-4 is hereby amended to read as follows:

"Sec. 30-4 Permit to make connection -- application.

Applicants for permits to connect with the sanitary sewer system of the City pursuant to this article shall file an application with the Permits and Inspection Services Office in writing, giving a particular description of the premises to be

connected, the value thereof and the purpose for which such premises are to be used.”

SECTION 18: Monterey City Code, Chapter 32, § 32-2, paragraph b is hereby amended to read as follows:

“(b) It shall be the duty of the City Manager or his or her designated representative to serve or cause to be served written notice upon all persons owning or maintaining any barbed wire placed, fastened or stretched, either for the purpose of fencing or otherwise, along the line of any street, lane, alley, or public place within the City that such barbed wire shall, within 30 days thereafter, be removed from off the line of such street, lane, alley or public place. All notices so served, with a certificate signed by the City Manager or his or designated representative showing by whom, upon whom, where and when served, shall immediately be filed in accordance with the City’s record retention schedule.”

SECTION 19: Monterey City Code, Chapter 33, § 33-81 paragraph e is hereby amended to read as follows:

“(e) A geologic soils report prepared by a civil engineer who is registered by the state, unless the Plans and Public Works Department shall determine that, due to the knowledge such department has as to the soil qualities of the soil of such subdivision or lot, no preliminary analysis is necessary. If the preliminary soils report indicates the presence of critically expansive soils or other soil problems the person filing the tentative map shall submit a soils investigation of each lot in the subdivision, prepared by a civil engineer who is registered in this state, which shall recommend corrective action which is likely to prevent structural damage to each dwelling proposed to be constructed on the expansive soil. The Building Safety & Inspections Division shall approve the soils investigation if it determines that the recommended action is likely to prevent structural damage to each dwelling to be constructed and shall require that the approved recommended action be incorporated in the construction of each dwelling as a condition to the building permit.”

SECTION 20: Monterey City Code, Chapter 38, § 38-11 definition of Deputy City Manager Plans and Public Works is hereby replaced to read as follows:

Public Works Director: The staff member or staff members appointed by the City Manager to perform the functions of Public Works Director.”

SECTION 21: Monterey City Code, Chapter 38, § 38-112.3, paragraph D is hereby

amended to read as follows:

"D. Method of Compliance

The Chief of Inspection Services/Building Official shall maintain the following documents for the public:

- 1. GreenPoints Checklist for Residential and Non-Residential Buildings as approved and adopted by City Council Resolution.

These documents shall be to aid in the design and certification of new residential and non-residential buildings, remodels, and additions. Every applicant for a building permit not exempted by Section C, above, shall complete and submit the appropriate checklist for the project along with the standard Plans and Public Works Department application documents. All compliance measures shall be clearly delineated on plan sets."


SECTION 22 All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 23: 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 6th day of March, 2012, by the following vote:

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

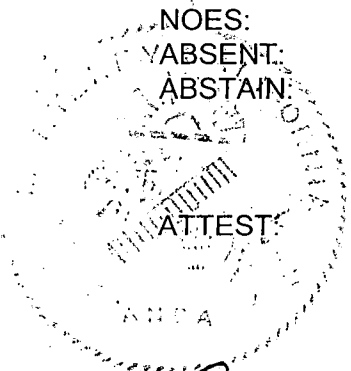
APPROVED:



 Mayor of said City



 City Clerk thereof



STATE OF CALIFORNIA)
COUNTY OF MONTEREY)
CITY OF MONTEREY)


I, Catherine 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 21ST DAY OF FEBRUARY 2012, BY THE FOLLOWING VOTE:

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

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None

DATED: February 21, 2012


CITY CLERK OF SAID CITY