

**ORDINANCE NO. 3488 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**1ST READING ADDING ARTICLE 9 TO CHAPTER 33 OF THE MONTEREY CITY CODE TO  
AUTHORIZE COVENANT OF EASEMENT ORDINANCE PURSUANT TO GOVERNMENT  
CODE SECTION 65870 ET SEQ.**

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

**SECTION 1:**

WHEREAS, under California law, the City cannot require an easement over parcels which are under common ownership. This creates a problem for single owner development where there may be a need for emergency access across property lines or where ingress and egress require use of an adjacent parcel, for example.

WHEREAS, Government Code section 65870 et seq. creates an exception to this general rule for cities and counties, and allows the creation of easements on properties held by a common owner when necessary to serve the limited purposes of parking, ingress, egress, emergency access, light and air access, landscaping, or open space purposes.

WHEREAS, the Government Code requires that the City pass a local enabling ordinance that allows for the creation of easements for properties held in common ownership.

WHEREAS, The City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA)(CCR, Title 14, Chapter 3 ("CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 33, Article 9, is hereby added to read as follows:

## Article 9. Covenant of Easement

### Sec. 33-200. General Provisions.

This article is adopted pursuant to Government Code section 65870 et seq.

### Sec. 33-201. Applicability.

When necessary to achieve the land use goals of the City, the City may require a property owner holding property in common ownership to execute and record a covenant of easement in favor of the City for one or more of the following purposes:

- A. Parking
- B. Ingress and egress
- C. Emergency access
- D. Light and air access
- E. Landscaping
- F. Open space

### Sec. 33-202. Contents of Covenant.

The covenant of easement recorded pursuant to this chapter shall be executed by the owner(s) of the burdened property and shall include:

- A. A legal description of the real property to be subject to the easement;
- B. A legal description of the real property to be benefited by the easement;
- C. Identification of the City approval or permit granted which relied on or required the covenant; and
- D. A description of the purpose(s) of the easement.
- E. A statement that upon recordation, the burdens of the covenant of easement shall be binding upon all successors in interest to the real property.
- F. A statement that the covenant of easement shall not be modified or released without the prior approval of the City in the manner required by law.

### Sec. 33-203. Acceptance by City.

The City Manager may accept an easement on behalf of the City when such an easement is required as a condition of a land use approval, permit, or designation pursuant to this chapter.

### Sec. 33-204. Recordation.

The covenant of easement shall be recorded by the City on behalf of the property owner in the Monterey County Recorder's Office.

**Sec. 33-205. Effect of Covenant.**

From and after the time of recordation, the covenant of easement shall:

- A. Act as an easement in compliance with Civil Code section 801 et seq., except that it shall not merge into any other interest in the real property. Civil Code section 1104 shall be applicable to the conveyance of the affected real property; and
- B. Impart notice to all persons to the extent afforded by the recording law of the State of California. Upon recordation, the burdens of the covenant shall be binding on, and the covenant shall benefit, all successors-in interest to the real property.

**Sec. 33-206. Enforceability of Covenant.**

The covenant of easement shall be enforceable by the successors-in-interest to the real property benefited by the covenant and the City. Nothing in this section creates standing in any person, other than the City, and the owner of the real property burdened or benefited by the covenant, to enforce or to challenge the covenant or any requested amendment or release.

**Sec. 33-207. Release of Covenant.**

The release of the Covenant of Easement may be affected by the Planning Commission or the City Council on appeal, following a noticed public hearing.

- A. The Covenant of Easement may be released by the City at the request of any person, whether or not that person has title to the real property, on a finding that the covenant on the subject property is no longer necessary to achieve the land use goals of the City.
- B. Upon determination that the restriction on the property is no longer necessary to achieve the land use goals of the City, a release shall be recorded by the City with the Monterey County Recorder's Office.
- C. For purposes of this section, an appeal of the Planning Commission's decision to the City Council may be made pursuant to the provisions set forth in City Code section 38-203 et seq.

**Sec. 33-207. Fees.**

The fee for filing a petition for release of covenant of easement pursuant to this Chapter shall be as set forth in the schedule of fees established by resolution of the Council.

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

SECTION 9: 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 19th day of November, 2013, by the following vote:

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

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof