

ORDINANCE NO. 3503 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

TO ADOPT SECTION 32-6.2 OF THE MONTEREY CITY CODE TO PROHIBIT SITTING OR LYING DOWN ON SIDEWALKS IN COMMERCIAL DISTRICTS

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

SECTION 1:

WHEREAS, in Fiscal Year 2013-2014, the City of Monterey dedicated \$130,000 from Community Development Block Grant funds and Successor Agency funds to community service organizations, some of which provide services for the homeless and other disadvantaged residents;

WHEREAS, in Fiscal Year 2013-2014, the City of Monterey dedicated \$40,000 from the General Fund to social programs to help the homeless. On April 15, 2014, the City of Monterey added \$9,275 to the fund, for a total of \$49,275 for homeless services;

WHEREAS, on April 15, 2014, the Council passed Resolution 14-057 to participate in a challenge grant to match funds with other cities to help the homeless;

WHEREAS, based on public testimony taken on February 12, 2013, April 24, 2013, May 21, 2013, August 28, 2013, October 23, 2013, January 14, 2014 and April 15, 2014, the City Council determined that residents, taxpayers, and business owners share the consensus that the City should continue to provide this funding and explore additional ways to help the homeless subject to resource constraints and taking into account other needs such as public safety and the City's infrastructure;

WHEREAS, public spaces in commercial districts have become increasingly inhospitable due to groups of individuals, often with dogs, creating encampments on sidewalks in commercial areas. These encampments obstruct pedestrian access, result in litter, debris, and waste left on City sidewalks. Business areas become dangerous to pedestrian safety and economic vitality when individuals block the sidewalks. Persons who sit or lie down on public sidewalks in commercial areas during business hours threaten the safety of pedestrians, especially the elderly, disabled, vision-impaired, and children. Lying down or sitting is an incompatible use of a sidewalk in a commercial area;

WHEREAS, as a result of people sitting and lying down on the sidewalk, residents and visitors tend to avoid some commercial areas in the City, which threatens the viability of the City's businesses that are already struggling. This in turn threatens the City's overall economic health. Reduced economic activity results in fewer resources available for services, including homeless services;

WHEREAS, the City of Monterey seeks to preserve the right to enjoy public space and traverse freely, while protecting the free-speech rights of individuals and groups;

WHEREAS, the prohibition against sitting and lying down on sidewalks leaves intact the individual's right to speak, protest, or engage in other lawful activity on any sidewalk consistent with any City permitting requirements;

WHEREAS, there are a number of places where the restrictions of this ordinance do not apply, such as the City's 35 parks (256.2 acres) and 5 beaches (37.77 acres). Those areas are open and available during the day for everyone's use.

WHEREAS, the City has approximately 323,746 linear feet of concrete sidewalk, and this ordinance would only apply to about 38% of the total, or to 123,746 linear feet. This ordinance would not apply to approximately 62% of sidewalks in the City.

WHEREAS, present laws that prohibit the obstruction of pedestrians or sidewalks do not adequately address the safety hazards, disruption, and deterrence to pedestrian traffic caused by persons sitting or lying on sidewalks;

WHEREAS, the purpose of this ordinance is solely to address the impacts of sitting and lying down on public sidewalks in commercial districts at certain hours of the day. The need to maintain pedestrian and commercial traffic is greatest during the hours of operation of businesses, shops, and restaurants when public sidewalks are congested. It is the intent of the City that this ordinance be interpreted and applied in a manner that does not discriminate against homeless, mentally ill, or other residents of the City based on their status;

WHEREAS, it is not the intent of the City to criminalize persons for sitting or lying on the sidewalk given that other options are available (public parks, beaches, benches, bus stop benches, etc.);

WHEREAS, this ordinance shall not take effect until October 1, 2014, so that comprehensive outreach and education can be conducted, involving homeless and youth service providers, merchants, community agencies, and City staff including police; and

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 32, Section 32-6.2, is hereby added to read as follows:

“32-6.2 – Prohibiting Sitting and Lying on Commercial Sidewalks at Certain Times – Exceptions

- A. **Sitting on Commercial Sidewalks at Certain Times Prohibited.** No person shall sit or lie on a Commercial Sidewalk or on any object brought or affixed to said sidewalk, from 7:00 a.m. until 9:00 p.m., except as provided in this Section.
- B. **Exceptions.** The prohibition in Subsection A shall not apply to any person sitting or lying on a commercial sidewalk:
 - 1. Due to a medical emergency;
 - 2. On a wheelchair or other device that is needed for mobility;
 - 3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
 - 4. Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to an encroachment permit;
 - 5. Participating in or attending a parade, festival, performance, rally, demonstration, meeting or similar event conducted on pursuant to and in compliance with an event permit or other applicable permit. This Section shall not be construed to prohibit persons from obtaining such City permits; or
 - 6. Who is a child seated in a stroller.

These exceptions shall not be construed to allow conduct that is prohibited by other laws.

- C. This Section shall not be applied or enforced in a manner that violates the United States or California constitutions.
- D. **Necessity of Warning Prior to Citation.** No person may be cited for a violation of this section until a peace officer first warns said person that his or her conduct is unlawful and said person is given a chance to stop said conduct. One warning by a peace officer to a person who is violating this Section is sufficient for a 30-day period as to any subsequent violations of this Section by said person during said period.
- E. **Commercial Sidewalk – Definition.** As used in this Section, “Commercial Sidewalk” means all sidewalks in front of property designated on the City’s General Plan map for mixed use areas, as shown in Appendix A to this ordinance.
- F. **Penalty.** An administrative citation may be issued to any person who violates this

section, or a violation may be charged as an infraction.

SECTION 7: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 8: If any section, sentence, clause, phrase, word, portion or provision of this ordinance is for any reason held to be invalid unenforceable by any court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The City Council hereby declares that it would have adopted each section, sentence, clause, phrase, or portion of this ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this ordinance be declared invalid or unenforceable, and, to that end, the provisions of this ordinance are severable.

SECTION 9: This ordinance shall be in full force and effect on October 1, 2014.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 5th day of August, 2014, by the following vote:

AYES:	4	COUNCILMEMBERS:	Downey, Selfridge, Sollecito, Della Sala
NOES:	1	COUNCILMEMBERS:	Haffa
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City

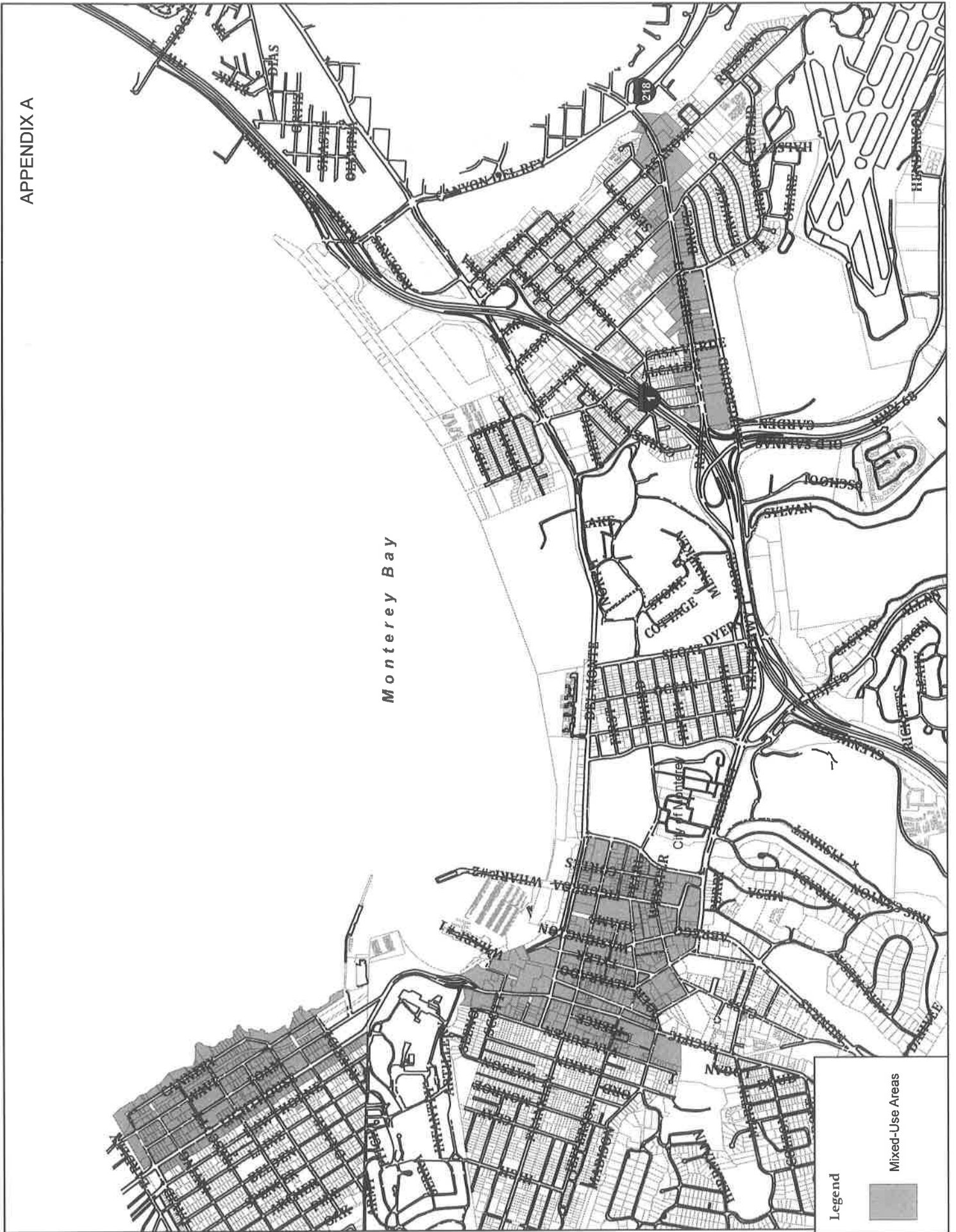


City Clerk thereof



APPENDIX A

Monterey Bay



Legend

Mixed-Use Areas