

ORDINANCE NO. 3521 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**AMENDING SECTION 22-25.5 OF THE MONTEREY CITY CODE REGARDING TRESPASS
TO PRIVATE PROPERTY AND BUSINESS PREMISES.**

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

SECTION 1:

WHEREAS, state law makes it a misdemeanor to enter and occupy real property or structures without the consent of the owner, the owner's agent, or a person in lawful possession;

WHEREAS, state law makes it a misdemeanor to enter any land for the purpose of interfering with, obstructing, or injuring a lawful business carried on by the owner, operator or agent thereof;

WHEREAS, state law does not provide adequate means for a property owner or business owner, their agents or persons in lawful possession, to prevent the entry or reentry of individuals previously excluded from their premises;

WHEREAS, the proposed ordinance provides clear guidance with regard to when law enforcement may cite an individual for initial trespass, or continued trespass after they have been excluded from private property or business premises;

WHEREAS, the proposed ordinance recognizes constitutional and statutory protections afforded to members of the public;

WHEREAS, the proposed ordinance represents a fair balance of the interest of property owners and business proprietors with those of the public; 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 22, Section 25.5 is hereby amended to read as follows:

“Sec. 22-25.5 Trespass upon Private Lands and Business Premises; Unwelcome

- (a) No person shall enter or remain upon private property or business premises after having been informed, orally or in writing, by the owner, the owner’s agent, or the person in lawful possession of the property, or any police officer or City official acting at the request of the owner, the owner’s agent, or the person in lawful possession of the property, to remove himself or herself therefrom. The posting of signs indicating the property is private or stating “no trespassing” shall be sufficient warning that the property is private and not open to public use, occupation, or entry, or the receipt of a written request to exclude persons from entering or remaining upon the property from the property owner, owner’s agent, or the person in lawful possession of the property by the City shall be sufficient to enable enforcement of this provision for a period not exceeding 12 months. The requestor shall inform the City when the assistance is no longer desired, before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession.
- (b) It shall be unlawful for any person excluded from private property or business premises pursuant to subdivision (a) to reenter the subject premises within ninety (90) days after having been requested to remove himself or herself therefrom.
- (c) The foregoing notwithstanding, this section shall not apply in the following instances:
 - (1) Where persons are lawfully on quasi-public property who are engaging in activities protected by the California or United States Constitution, unless such persons are interfering with or blocking ingress or egress to any premises on the property or are acting in a manner that is unsafe or disruptive to the quiet enjoyment of the property by its owner;
 - (2) Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Acts or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, sexual orientation, creed, ancestry or national origin;
 - (3) Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code;

- (4) Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;
- (5) Where the person who is upon another's private property or business premises is there under claim or color of legal right. This exception is applicable to (but not limited to) the following types of situations involving disputes wherein the participants have available to them practical and effective civil remedies: marital and post-marital disputes; child custody visitation disputes; disputes regarding title to rights in real property; landlord-tenant disputes; disputes between persons residing together upon the property concerned up until the time of the dispute, employer-employee disputes; business-type disputes such as those between partners; debtor-creditor disputes, and instances wherein the person claims rights to be present pursuant to order, decree, or process of a court."

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 1st day of September, 2015, by the following vote:

AYES:	5	COUNCILMEMBERS:	Barrett, Downey, Haffa, Roberson, Smith
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City




City Clerk thereof