

**ORDINANCE NO. 3645 C.S.**

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

**PROHIBITING METAL DETECTING ACTIVITY ON CITY PROPERTY THAT WAS PART OF THE FORMER FORT ORD AND MAKING ENTRY ON CITY PROPERTY ORDERED CLOSED BY THE CITY COUNCIL OR CITY MANAGER UNLAWFUL**

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

SECTION 1:

WHEREAS, the United States Army transferred various parcels of the former Fort Ord military installation ("Fort Ord") to multiple local governmental entities, including the City of Monterey;

WHEREAS, some parcels on Fort Ord were contaminated with unexploded ordnance and explosives ("UXO"), which can be hazardous. Prior to transferring such parcels, the Army completed UXO response actions as required by law. However, even following the Army's completion of UXO response actions, it is possible that some UXO materials may remain on the parcels;

WHEREAS, in 2007 the City adopted Ordinance No. 3384 (codified as (Monterey City Code Chapter 9, Article 8) to regulate digging and excavation on the former Fort Ord due to the risks associated with potential remaining UXO. As part of that Ordinance, the City was required by resolution to designate all real property within the City's land use jurisdiction that was formerly part of Fort Ord and which had been identified as the possible location of UXO as an ordnance remediation district ("ORD"). Pursuant to Monterey City Code section 9-75, all of the regulations in Chapter 9, Article 8 apply to ORD districts;

WHEREAS, in 2020, a trespasser was discovered on the County of Monterey's Fort Ord lands using metal detection devices. During review of the matter with the Bureau of Land Management, U.S. Army, and the California Department of Toxic Substances Control ("DTSC"), it was discovered that although excavation on Fort Ord parcels is prohibited in the City's digging and excavation ordinance (Monterey City Code Chapter 9, Article 8), metal detection was not specifically prohibited;

WHEREAS, the City desires to amend Monterey City Code Chapter 9, Article 8 to add a prohibition on unauthorized metal detecting activities on the former Fort Ord in the City's land use jurisdiction to protect the public health and safety because unauthorized entry and/or metal detecting may result in lay persons encountering UXO, which puts them at immediate risk of death or injury if they do not have proper training, experience, or equipment to handle UXO safely;

WHEREAS, Monterey City Code section 22-25.5 currently prohibits trespassing on private property and Monterey City Code section 23-13 makes it unlawful to enter a City recreation area, such as a park or beach, which has been posted as closed by the Parks and Recreation Director. However, not all of the former Fort Ord parcels now owned by the City meet the definition of a "recreation area." In order to protect the health and safety of the public, the City desires to amend Monterey City Code Chapter 22, Article 1 to make it unlawful to enter

upon public property that has been posted as closed to the general public when reasonably necessary for the conduct of City business and affairs, for the protection or preservation of the public peace, health and safety, or to avoid personal injury or property damage; and

WHEREAS, the City of Monterey determined that the proposed action is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Article 19, Section 15308, Class 8 because the ordinance involves procedures for protection of the environment.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 3: Chapter 9, Article 8, Section 9-76.1 is hereby added to read as follows:

“9-76.1 Prohibition of Metal Detection Activity.

It is unlawful for any person to engage in any unauthorized metal detection activity of any type on any property located within the district. This prohibition does not prevent metal detection activity if specifically authorized by the City as part of (1) a permit for development, (2) a City project on City land, or (3) if authorized by a state and/or federal agency for remediation or similar purposes.”

SECTION 4: Chapter 22, Article 1, Section 22-25.6 is hereby added to read as follows:

“22-25.6 Trespass on City Property When Entry Prohibited.

No person shall enter or remain upon any property owned or controlled by the City of Monterey after having been ordered not to enter such property or having been ordered to leave same, either by posting of the premises with notices or upon order of a peace officer, when said City property or any portion thereof has been declared by order of the City Council or City Manager, closed continuously or for any interval of time, whether temporary or at stated intervals (days or otherwise), and whether entirely or merely as to certain uses, as said Council or City Manager, shall find reasonably necessary for the conduct of City business and affairs, for the protection or preservation of the public peace, health and safety, or to avoid personal injury or property damage; however, this section shall not apply to persons on the property who are engaging in activities protected by the California or United States Constitution.”

SECTION 5: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason declared unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its sections, subsections, sentences, clauses, or phrases.


SECTION 7: 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 21st day of December, 2021, by the following vote:

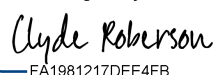
AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

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 *Charm*  
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City Clerk thereof

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Mayor of said City