

ORDINANCE NO. 3629 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**AMENDING DIVISION 3 TO CHAPTER 6, ARTICLE 2 OF THE MONTEREY CITY CODE
TO ESTABLISH AN ADMINISTRATIVE PROGRAM FOR THE CONTROL OF VICIOUS AND
POTENTIALLY DANGEROUS DOGS AND REPEALING PRIOR VICIOUS DOG
REGULATION IN SECTION 6-28**

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

SECTION 1:

WHEREAS, in the last five years there have been 119 police reports involving dog incidents, including multiple dog attacks on people and other animals causing severe injuries and trauma to persons within the City of Monterey and because of the increasing number of attacks, biting, and menacing behavior by dogs, these incidents now present a public health and safety problem to the residents of the City;

WHEREAS, the City has incurred significant expenses in the form of employee time and administrative costs in responding to claims and civil lawsuits, in prosecuting criminal misdemeanors arising from these dog attacks, and in petitioning the Superior Court of California to have dogs declared vicious or potentially dangerous pursuant to Chapter 9 of Division 14 of the Food & Agricultural Code;

WHEREAS, as a charter city the City has the authority to adopt and enforce regulations and processes for the welfare and protection of its residents with respect to its municipal affairs, including, as Food & Agriculture Code sections 31683 and 31621 expressly recognizes, the authority to adopt and enforce its own program for the control of vicious and potentially dangerous dogs;

WHEREAS adoption of its own program and administrative process for the control of vicious and potentially dangerous dogs will obviate the need to file petitions in the Superior Court of California to have dogs declared vicious or potentially dangerous pursuant to Chapter 9 of Division 14 of the Food & Agricultural Code, and will thereby save the City time and expense;

WHEREAS, the City desires to amend Chapter 6 of the Monterey City Code to adopt a program for the control of vicious and potentially dangerous dogs, consistent with Chapter 9 of Division 14 of the Food & Agricultural Code;

WHEREAS, the enactment of this ordinance does not impose any mandatory duties on the City or its personnel. Rather, application of this Division is discretionary and permissive.

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, Section 6-28 is hereby repealed. However, if before the effective date of the repeal the City of Monterey Police Department cites or has cited any person for violation of Section 6-28, that section shall remain enforceable through the time of any criminal prosecution, administrative proceeding, or other proceeding resulting from said citation.

SECTION 3: 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 4. Monterey City Code section 6-29 is hereby reserved for future use.

SECTION 5: Division 3 of Article 2 of Chapter 6 of the Monterey City Code is hereby added as follows:

Division 3. Vicious and Potentially Dangerous Dogs

Sec. 6-30. Purpose and Scope of Division.

- (a) This division does not apply to dogs utilized by the Police Department or any law enforcement agency or officer in the performance of police work or law enforcement.
- (b) It is the intent of this division to abate the public nuisance of vicious and potentially dangerous dogs by establishing an administrative procedure for hearing and disposing of petitions to have dogs declared vicious and potentially dangerous in lieu of a petition to the Superior Court, and by establishing consequences for the ownership and keeping of vicious and potentially dangerous dogs.

Sec. 6-31. Definitions.

- (a) "Animal control officer" and "animal control department" means the City of Monterey Police Department and its personnel, or other department or personnel assigned by the Police Chief or City Manager the function of animal control.
- (b) "Enclosure" means a fence or structure equipped with a lock, suitable to prevent the entry of children at all times, and suitable to confine a vicious dog and prevent escape in conjunction with other measures which may be taken by the owner or keeper of the dog. The enclosure must be consistent with Section 597t of the California Penal Code, adequately lighted and ventilated, and kept in a clean and sanitary condition.
- (c) "Hearing officer" means the person designated by the City Manager to hear

matters pursuant to Section 1-9.6 of the City Code, or such other person that the City Manager may designate for a hearing pursuant to this division.

- (d) "Impounded" means taken into the custody of the animal control department, public animal shelter, or provider of animal control services to the City.
- (e) "Potentially dangerous dog" means any of the following:
 - (1) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury whether the person and the dog are on or off the property of the owner or keeper of the dog.
 - (2) Any dog which, when unprovoked, causes an injury to any person, less severe than a "severe injury" as that term is defined herein.
 - (3) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal on or off the property of the owner or keeper of the dog.
- (f) "Police Chief" means the Chief of the Monterey Police Department, or the Chief's designee.
- (g) "Severe injury" means any physical injury to a human being that results in laceration, bruises, muscle tears, or similar conditions.
- (h) "Vicious dog" means any of the following:
 - (1) Any dog that, when unprovoked, inflicts severe injury on or kills a human being.
 - (2) Any dog previously determined to be and currently listed as a potentially dangerous dog that, after its owner or keeper has been notified of this determination, continues the behavior or commits another act described in subdivision (e), or is maintained in violation of any previous order determining that the dog was vicious or potentially dangerous.

Sec. 6-32. Administrative Process.

- (a) Initiation of proceeding. If an animal control officer or any peace officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the Police Chief may petition the hearing officer for the purpose of determining whether or not the dog should be declared potentially dangerous and/or vicious. The petition shall be signed by the Police Chief, state the factual basis for the determination that the dog is potentially dangerous or vicious, and list the remedies sought, which may include any or all of the following:
 - (1) Euthanasia. The humane disposition of a vicious dog by euthanasia by a provider duly authorized to perform that service;

- (2) Prohibition on owning and keeping. That the owner or keeper of a vicious dog not be permitted to own or keep any dog for a period up to 36 months;
- (3) Confinement to enclosure. That a vicious dog be kept at all times, except to receive veterinary care from a licensed veterinarian, in an enclosure on the property of the owner;
- (4) Confinement to property. That a vicious or potentially dangerous dog be kept at all times, except to receive veterinary care from a licensed veterinarian, on the property of the owner or keeper, but not on any porch, patio, yard, or other part of the property that would allow the dog to exit on its volition;
- (5) Muzzling. That a vicious or potentially dangerous dog shall, at all times when not on the property of the owner or keeper, be muzzled with a humane device to prevent biting;
- (6) Restraint. That a vicious or potentially dangerous dog shall, at all times when not on the property of the owner or keeper, be restrained by a substantial leash of appropriate length, not to exceed five (5) feet, and be under the control of a responsible person 18 years of age or older who is physically capable of restraining the dog;
- (7) Spay/Neutering. That an owner or keeper of a vicious or potentially dog present within 5 business days proof that the dog has been spayed or neutered, and if the dog has not already been spayed or neutered, to cause the dog to be spayed or neutered by a licensed veterinarian at the owner's expense and to present proof thereof within 30 calendar days;
- (8) Registration. That the owner or keeper of a vicious or potentially dangerous dog must within 5 business days license the dog pursuant to Division 2 of this Article and at all times maintain an appropriate license for the dog;
- (9) Identification. That the owner or keeper of the dog shall provide two photographs of the vicious or potentially dangerous dog, or allow the animal control officer to photograph the dog, for purposes of identification;
- (10) Notification. To immediately inform any City, county, postal officials, or utility company meter readers, and anyone else that lawfully comes onto the property, of the dog's viciousness or potential dangerousness and to inform the animal control officer if the dog is moved to another location inside or outside the City limits;
- (11) Signs. To display in a prominent place on the property where the dog is kept a sign easily readable by the public using the words "Beware of Dog" or "Beware of Animal" in letters at least three inches high;
- (12) Payment of cost. To pay costs reasonably incurred by the City and animal control officer, including all fees associated with impounding the dog and/or causing its humane disposition by euthanasia;
- (13) Designation in Licensing Records. To have the potentially dangerous or

vicious dog designation in the licensing and registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the hearing officer has issued a decision so finding; and

(14) Other. To take any other steps deemed reasonably necessary to protect the health, safety, and welfare of the public.

(b) Notice. The Police Chief shall notify the owner or keeper of the dog in writing that a hearing will be held by the hearing officer, at which time the owner or keeper of the dog may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested at the address provided in the application for a dog license pursuant to Section 6-19 of Division 2 of this Article. If the dog has been impounded pursuant to subdivision (d), the hearing shall take place within 10 calendar days of the impoundment of the dog. If the dog has not been impounded, the hearing shall take place within 15 working days after service of the petition.

(c) Preliminary abatement orders. If deemed necessary under the circumstances by the Police Chief, the notice of hearing may include a reasonable preliminary abatement order, signed by the Police Chief, and with which the owner or keeper of the dog shall comply until the time that the hearing officer issues its decision, as provided below. The orders and conditions in the notice may include, but are not limited to, those stated in subdivision (a)(3), (4), (5), (6), and (12), and subdivision (d) of this Section.

(d) Impound of dog pending decision or disposition by euthanasia.

(1) If upon investigation it is determined by the Police Chief or animal control officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the Police Chief or animal control officer may impound the dog pending the hearing officer's decision pursuant to this section. The owner or keeper of the dog shall be liable to the City for the costs and expenses of impounding the dog, if the dog is later adjudicated to be vicious or potentially dangerous.

(2) If, after the hearing, the hearing officer orders that a vicious dog be euthanized, the Police Chief or animal control officer may impound the dog pending its disposition by euthanasia. The owner or keeper of the dog shall be liable to the City for the costs and expenses of impounding the dog until such time that the dog is euthanized or that the Police Chief or animal control officer receives from the owner or keeper of the vicious dog a written statement that the City may proceed with euthanizing the dog, whichever shall occur first.

(3) When it is not contrary to public safety, the Police Chief or animal control officer may permit the dog to be impounded at the owner's expense in a Police Department-approved kennel or veterinary facility.

(e) Hearing procedure. The following procedure shall apply to the hearing:

(1) The hearing shall be open to the public.

(2) The Police Chief or animal control officer shall have the burden of proving by a preponderance of the evidence that the dog is vicious or potentially dangerous.

(3) Formal rules of evidence shall not apply. The hearing officer may consider any relevant matter if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, including but not limited to testimony, incident reports, witness statements, photographs, video, and veterinary documents.

(4) Any party shall have the right and the opportunity to cross-examine any person giving testimony at the hearing.

(5) The hearing officer shall decide all questions of fact.

(f) Appearance. The failure of the owner or keeper of the dog to appear at the hearing, without obtaining a written continuance from the hearing officer, shall constitute the waiver of any right to introduce evidence and a failure to exhaust administrative remedies.

(g) Affirmative defenses.

(1) No dog may be declared potentially dangerous or vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime.

(2) No dog may be declared potentially dangerous or vicious if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.

(3) No dog may be declared potentially dangerous or vicious if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing, or assaulting the dog.

(h) Decision.

(1) Vicious or potentially dangerous determination. Within 15 working days of the hearing, the hearing officer shall issue a written decision determining whether, based upon a preponderance of the evidence, the dog is vicious or potentially dangerous and specifying the reasons for that determination. If the hearing officer determines that the dog is vicious or potentially dangerous, they may order any or all of the remedies permitted by subdivision (a)(3)-(14) as may be appropriate for the safety of the public.

(2) Additional determinations for vicious dogs. If the hearing officer determines that the dog is vicious, the hearing officer shall also determine:

(a) Euthanasia. If the petition sought humane disposition of the dog by euthanasia, the hearing officer shall determine whether the public

health, safety, and welfare is adequately addressed by any or all of the remedies permitted in subdivision (a)(3)-(13). If the hearing officer determines that said remedies would not adequately protect the health, safety and welfare of the community, then the hearing officer shall order that the Police Chief or animal control officer carry out the dog's humane disposition by euthanasia after all times for judicial review of the hearing officer's decision have expired, or after receipt from the owner or keeper of the vicious dog a written statement that the City may euthanize the dog pursuant to subdivision (d)(2) of this section, whichever comes first. The owner or keeper of the dog shall be responsible for the cost of euthanizing the dog.

(b) Prohibition on owning/keeping. If the petition seeks a prohibition against the owning or keeping of dogs pursuant to subdivision (a)(2), the hearing officer shall determine whether ownership or keeping of any dog by the owner or keeper of the vicious dog would create a significant threat to the public health, safety, and welfare. If the hearing officer so determines, then they may prohibit the owning or keeping of dogs for a period of up to 36 months

(i) Service of Decision. After the hearing officer issues the decision, the owner or keeper of the dog shall be served with a copy of the decision, either personally or by first-class mail postage prepaid. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper of the dog shall comply with all provisions of the decision within the time limits specified therein.

(j) Administrative finality of decision. The hearing officer's decision is the final administrative act and is not appealable to any person or body of the City.

(k) Judicial Review. The decision of the hearing officer is subject to judicial review according to the provisions, process, and time limits set forth in Code of Civil Procedure section 1094.6.

Sec. 6-33. Remedies cumulative and not exclusive.

Nothing in this division shall be read to exclude any other remedy, penalty, or process that the City may seek to impose or pursue, including but not limited to any administrative citation, fine, criminal proceeding, or civil proceeding/public nuisance action for damages.

Sec. 6-34. Violation of this Division and of Written Decision

Any violation of the provisions of this Division, or of the remedies, terms, and conditions of the written decision issued by the Hearing Officer pursuant to Section 6-32(h)(1), is punishable by any available legal or equitable means at the discretion of the City, including but not limited to administrative citation, fine, criminal proceeding for infraction or misdemeanor, or civil proceeding.

SECTION 6: All ordinances and parts of ordinances in conflict herewith are hereby

repealed.

SECTION 7: 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 8: 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 20th day of October, 2020, 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:

DocuSigned by:

FA1084247DEF4FB
 Mayor of Monterey

DocuSigned by:

ED8453A4E62C4AA
 City Clerk thereof