

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING SECTION 2.04.355 TO THE MONTEREY COUNTY CODE RELATING TO
ATTORNEY COMMUNICATIONS WITH BOARD OF SUPERVISORS AND OTHER
COUNTY DECISION-MAKERS.**

County Counsel Summary

This ordinance waives the State Bar Rule of Professional Conduct prohibition on attorneys' ex parte contacts with members of an administrative body acting in an adjudicative capacity and therefore allows licensed attorneys to have ex parte contacts with members of adjudicative/quasi-judicial administrative hearing bodies of the County of Monterey. Ex parte contacts are contacts by one side/party with the decision-maker that exclude the other side/party. Adjudicative/quasi-judicial hearing bodies include, but are not limited to, the Board of Supervisors, Planning Commission and Zoning Administrator when considering land use permit applications and other entitlement matters.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and purpose. Land use permits and other land use entitlements are heard and granted or denied at administrative hearings where the decision-maker is acting in a quasi-judicial capacity. Attorneys and non-attorneys regularly advocate for themselves and clients on entitlement matters in these hearings and outside of administrative hearings. Rule 3.5 of the California Rules of Professional Conduct for lawyers prohibits ex parte contacts, which are contacts outside of the hearing process, except as permitted by adopted procedures. Because only licensed attorneys are bound by the prohibition of these ex parte contacts with administrative hearing body members, the purpose of this ordinance is to waive this prohibition and allow the same access to decision-makers by attorneys and non-attorneys alike, within the bounds of due process and fair hearing.

SECTION 2. Section 2.04.355 is added to the Monterey County Code to read as follows:

Section 2.04.355 – Attorney communications with members of the Board of Supervisors and other hearing officers acting in an adjudicative capacity

- A. Notwithstanding Rule 3.5 of the California Rules of Professional Conduct for lawyers, members of the State Bar are not prohibited from communicating with members of the Board of Supervisors, the Planning Commission, Zoning Administrator or other County decision-maker on the merits of adjudicative matters which are, or may become, pending before the Board of Supervisors or other County decision-making body, including planning, zoning, and subdivision matters, outside of the public hearing on the matter. All due process and fair hearing principles continue to apply to adjudicative matters before these hearing bodies.
- B. Rule 3.5 does not apply to the County Counsel, such deputies as the County Counsel may appoint, or outside counsel providing legal services to the County who, as legal

advisor to the Board of Supervisors and the County, may continue to provide confidential attorney-client legal advice on the merits of adjudicative matters, including planning, zoning, and subdivision matters.

- C. County employees, County administrative body members, County board members, County commission members, and the like, who are lawyers but who are not representing the County in an attorney capacity may continue to communicate with decision-makers and administrative body members about adjudicative/quasi-judicial administrative matters notwithstanding Rule 3.5 of the California Rules of Professional Conduct for lawyers, subject to all other applicable laws governing such communications.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John M. Phillips, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

CHARLES J. MCKEE
County Counsel