



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 19-0494, **Version:** 1

a. Introduce, waive reading, and set July 9, 2019, at 1:30 p.m. as the date and time to consider adoption of an ordinance of the County of Monterey, State of California, adding Section 2.04.355 to the County Code related to attorney communications with members of the Board of Supervisors and other decisionmakers acting in an adjudicative capacity.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Introduce, waive reading, and set July 9, 2019, at 1:30 p.m. as the date and time to consider adoption of an ordinance of the County of Monterey, State of California, adding Section 2.04.355 to the County Code related to attorney communications with members of the Board of Supervisors and other decisionmakers acting in an adjudicative capacity; and

SUMMARY/DISCUSSION:

Historically, lawyers have been prohibited from ex parte contact with judicial officers involving a contested matter. Ex Parte contact means contact with the judicial officer for the benefit of one side/party where the other side/party is excluded. New Rule 3.5 of the California Rules of Professional Conduct for lawyers expanded the ex parte contact prohibition to include contact with members of administrative bodies hearing matters in an adjudicative capacity. Land use and other entitlement hearings are known as quasi-judicial or adjudicative. Such entitlement matters come before the Board of Supervisors, the Planning Commission and the Zoning Administrator, and may include other bodies.

Rule 3.5 does not apply if the contact is permitted by law. County attorneys advising the Board, Planning Commission or the Zoning Administrator provide such service pursuant to law. Rule 3.5 also allows the local administrative body to adopt rules to permit ex parte contacts. Non-lawyers advocating for clients or a project are not bound by the Rules of Professional Conduct.

Chair Phillips submitted Referral 2019.02 requesting County Counsel draft rules of procedure so that licensed attorneys have the same access to decisionmakers as non-attorneys. Attached is a proposed ordinance exempting lawyers from Rule 3.5, including any County staff or Board members who are licensed attorneys. In addition, although County Counsel attorneys advising the County and Board members are permitted by law to provide legal advice to Board members outside of hearings, we have included an exemption for these attorneys out of an abundance of caution.

We are pleased to make any changes directed by the Board.

OTHER AGENCY INVOLVEMENT:

No other County department or agency has been involved.

FINANCING:

This ordinance assists in providing clear rules of procedure in the administration of County business.

Mark a check to the related Board of Supervisors Strategic Initiatives

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by:

Charles J. McKee, County Counsel
Date

Approved by:

Charles J. McKee, County Counsel
Date

Attachments:
Board Report
Ordinance Section 2.04.355
California Rule of Professional Conduct 3.5