

**ORDINANCE NO. 3474 C.S.**

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

**AMENDING SECTION 35-20 OF THE MONTEREY CITY CODE RELATED TO REFUNDS OF  
TRANSIENT OCCUPANCY TAXES**

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

**SECTION 1:**

WHEREAS, the City imposes a tax for the privilege of occupancy in any visitor accommodation facility located within the city of Monterey, which tax is paid by visitors to the accommodation facility at the time of use; and

WHEREAS, the City Council finds that it is in the best interests of the City that the City Code be amended to provide for a refund of taxes procedures that would require payment of assessed disputed taxes, as a precondition to pursuing judicial review of the City's transient occupancy tax assessment; and

WHEREAS, this amendment will provide for the timely recovery of transient occupancy taxes due and owing the City and will allow for the continued collection of funds necessary for essential public services.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 35, Section 20 is hereby amended to read as follows:

“(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Article, it may be refunded as set forth in this Section; provided that a claim in writing is filed in accordance with Section 1.8.2 and within a period of one year from the date of the claimed overpayment.

(b) Nothing in this section shall be deemed to bring into being or validate any claim for refund arising from a cause heretofore existent if such claim, whether filed or not, was or would have been invalid because of the then existing statutory term, and nothing in this section shall be deemed to validate, revive, restore or continue any claim for refund previously filed and denied.

(c) An operator may claim a refund or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Finance Director that the person from whom the tax

has been collected was not a transient; provided, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(d) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection (a) of this Section, but only when the tax was paid by the transient directly to the Finance Director, or when the transient having paid the tax to the operator establishes to the satisfaction of the Finance Director that the transient has been unable to obtain a refund from the operator who collected the tax.

(e) No refund shall be paid under the provisions of this Section unless the claimant establishes his right therefor by written records showing entitlement thereto.

(f) It shall be a condition for all persons, including business organizations and entities of any form whatsoever, against whom a jeopardy determination or deficiency determination is made that, prior to the filing of any lawsuit, of any kind whatsoever, including a claim for refund of taxes, injunction, or writ of mandate, or other equitable process, the payment of all taxes, interest and penalties as determined by the City shall be required to be paid as a condition to seeking judicial review of any tax liability. No such legal action shall be proper unless all of the administrative remedies provided in the City Code shall have first been exhausted, including the payment of the full amount owed as set forth and determined by the City."

SECTION 8: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 9: 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 March, 2012, by the following vote:

AYES:	4	COUNCILMEMBERS:	Downey, Haferman, Sollecito, Della Sala
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	1	COUNCILMEMBERS:	Selfridge
ABSTAIN:	0	COUNCILMEMBERS:	None


APPROVED:



\_\_\_\_\_  
Mayor of said City



ATTEST:




\_\_\_\_\_  
City Clerk thereof

STATE OF CALIFORNIA )  
COUNTY OF MONTEREY )  
CITY OF MONTEREY )

I, Catherine Raynor, SENIOR ASSISTANT CITY CLERK OF THE CITY OF MONTEREY, AND EX-OFFICIO CLERK OF THE COUNCIL THEREOF, HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS DULY PASSED TO PRINT IN THE OFFICIAL NEWSPAPER OF SAID CITY BY THE COUNCIL THEREOF ON THE 6th DAY OF MARCH 2012, BY THE FOLLOWING VOTE:

AYES: 5 COUNCILMEMBERS: Downey, Haferman, Sollecito, Selfridge, Della Sala  
NOES: 0 COUNCILMEMBERS: None  
ABSENT: 0 COUNCILMEMBERS: None  
RECUSED: 0 COUNCILMEMBERS: None

DATED: March 6th, 2012

  
CITY CLERK OF SAID CITY