

ORDINANCE NO. 3479 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMEND CHAPTER 18 OF THE MONTEREY CITY CODE BY ADDING ARTICLE 7,
SECTIONS 18-65 THROUGH 18-83 ALL RELATING TO PROCEDURES TO BE FOLLOWED
IN THE FORMATION OF A CONFERENCE CENTER FACILITIES DISTRICT

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

SECTION 1:

WHEREAS, the City is considering a renovation of the existing Monterey Conference Center ("Conference Center Renovation"); and

WHEREAS, the proposal for the Conference Center Renovation includes the formation of a special district ("Conference Center Facilities District") comprising the entire City but only subjecting to special taxation all hotels within the City, which would be subject to a special tax based upon a percentage of room revenues; and

WHEREAS, this ordinance establishes a procedure, incorporating relevant portions of the Mello-Roos Act of 1982, whereby hotel owners may vote for or against the formation of the District, the levy of a special tax and any bonded indebtedness, the proceeds of which would be used to finance, in part, the Conference Center Renovation; and

WHEREAS, the creation of special taxing districts and the issuance of bonds secured by special taxes levied on property therein entirely within the City is a municipal affair;

NOW, THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Chapter 18 of the Monterey City Code is hereby amended by adding new Article 7, sections 18-65 through 18-83 titled "Monterey Conference Center Facilities District Procedural Ordinance," to read as follows:

Article 7: Monterey Conference Center Facilities District Procedural Ordinance

§ 18-65 Purpose and intent.

The purpose and intent of this Article is to establish a procedure for financing certain public *conference center facilities* and maintenance through the establishment of conference center facilities districts, the levy and collection of special taxes within such districts and, for *conference center facilities*, the issuance of bonds secured by such special taxes.

§ 18-66 Special tax proceedings.

Proceedings for the formation of a conference center facilities district or districts for the purposes set forth in Section 18-71 may be conducted pursuant to this Article whether or not provided in any state law.

§ 18-67 Non-exclusivity.

- (a) This Article is not, in any way, exclusive.
- (b) The procedures provided in this Article are alternative to any other procedure provided in this Code or under state law.
- (c) The resolution of intention in any proceedings under any state law or other provision of the Monterey City Code may provide that such provisions are supplemented by this Article.

§ 18-68 Construction.

This Article is to be liberally construed.

§ 18-69 Definitions.

Each word that is defined in this Article appears in the text of this Article in italicized letters. Terms defined in the *Act* but not defined in this Article have the meaning given them in the *Act*. For the purpose of this Article, the following definitions shall apply:

Act means the Mello-Roos Community Facilities Act of 1982 (Chapter 2,5, commencing with section 53311 of Part I, Article 2, Title 5 of the California Government Code), as amended from time to time.

Conference center facility means any building, improvement to real property, equipment or personal property (in each case having an expected useful life of five years or longer) that is publicly-owned and any expansion, construction, reconstruction, rehabilitation, replacement or upgrade thereto.

Landowner means the owner of the real property upon which a *Visitor Accommodation Facility* is located, except that if the fee owner of the real property is a government entity, this term means the lessee of the government entity, if any.

Occupancy has the meaning set forth in section 35-10 of this Code.

Operator has the meaning set forth in section 35-10 of this Code.

Rent has the meaning set forth in section 35-10 of this Code.

Transient has the meaning set forth in section 35-10 of this Code.

Visitor Accommodation Facility has the meaning set forth in Section 35-10 of this Code; provided, that the City may create sub-classifications of Visitor Accommodation Facilities for purposes of determining the level of or exemption from the special tax in the proceedings for the formation of any community facilities district hereunder.

§ 18-70 Incorporation of the Mello-Roos Community Facilities Act of 1982 and portions of the Streets and Highways Code.

- (a) Except as otherwise provided herein, the *Act* and those sections of the California Streets and Highways Code referred to in the *Act*, are incorporated in and made a part of this Article.

- (b) Except as otherwise provided by this Article, the mode and manner for making improvements, for levying and collecting special taxes and for issuing bonds shall be as prescribed in the *Act*. In any conflict between the provisions of the *Act* or the referenced portions of the California Streets and Highways Code and this Article, the provisions of this Article shall prevail.
- (c) The provisions of sections 53312.7, 53312.8, 53313.6, 53313.7, 53313.9, 53325.6 (and the reference to 53325.6 contained in section 53331), 53329 and 53329.5 of the *Act* are not incorporated into this Article and shall have no application to proceedings conducted pursuant to this Article.
- (d) The provisions of section 53313.51 of the *Act* notwithstanding, whenever the City is a party to construction contracts, the City may use normal public works contracting procedures even if they do not involve or require the identification of "discrete portions or phases" of the facilities to be constructed.
- (e) For purposes of this Article, Section 53314.3 of the *Act* is amended to read as follows (deletions from Section 53314.3 of the *Act* shown in strike-through text in this ordinance):

In the first fiscal year in which a special tax or charge is levied for any facility or for any services in a community facilities district or a zone within a community facilities district, the legislative body shall include in the levy a sum sufficient to repay to the legislative body the amounts transferred to that district or zone pursuant to Section 53314. The amounts borrowed, with interest, shall be retransferred to the proper fund or funds from the first available receipts from the special levy in that district or zone.

Notwithstanding the above provisions, the legislative body may, by a resolution adopted no later than the time of the first levy, extend the repayment of the transferred funds over a period of time ~~not to exceed three consecutive years~~, in which event the levy and each subsequent levy shall include a sum sufficient to repay the amount specified by the legislative body for the year of the levy.

- (f) For purposes of this Article, Section 53314.5 of the *Act* is amended to read as follows (deletions from Section 53314.5 of the *Act* shown in strike-through text):

Pursuant to a resolution adopted by the legislative body, the legislative body may appropriate any of its available moneys to a revolving fund to be used for the acquisition of real or personal property, engineering services, or the construction of structures or improvements needed in whole or in part to provide one or more of the facilities of a community facilities district. The revolving fund shall be reimbursed from tax revenues or other moneys available from the facilities district, and no sums shall be disbursed from the fund until the legislative body has, by

resolution, established the method by, and term ~~not exceeding five years~~ within, which the community facilities district is to reimburse the fund. The district shall reimburse the fund for any amount disbursed to the area ~~within five years after such disbursement~~, together with interest at the current rate per annum received on similar types of investments by the legislative body as determined by the local agency's treasurer.

- (g) For purposes of this Article, section 53314.6 of the *Act* is amended to read as follows (deletions from Section 53314.6 of the *Act* shown in strike-through text):

(a) In connection with the financing of services and facilities pursuant to subdivision (f) of Section 53313 and subdivision (k) of Section 53313.5, the legislative body may establish a ~~revolving~~ fund to be kept in the treasury of the district. Except as provided in subdivision (b), moneys in the ~~revolving~~ fund shall be expended solely for the payment of costs with respect to those services and facilities. The ~~revolving~~ fund may be funded from time to time with moneys derived from any of the following:

(1) Proceeds of the sale of bonds issued pursuant to Article 5 (commencing with Section 53345), notwithstanding any limitation contained in Section 53345.3.

(2) Any taxes or charges authorized under this chapter.

(3) Any other lawful source.

(b) Subject to the provisions of any resolution, trust agreement or indenture providing for the issuance of district bonds for the purposes set forth in subdivision (k) of Section 53313.5, the legislative body may withdraw money from the ~~revolving~~ fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to accomplish the purposes for which the ~~revolving~~ fund was established. Any moneys withdrawn from the ~~revolving~~ fund shall be used to redeem bonds of the district issued for the purposes set forth in subdivision (k) of Section 53313.5 or shall be paid to taxpayers in the district in amounts that the legislative body determines.

- (h) For purposes of this Article, section 53314.9 of the *Act* is amended to read as follows (deletions from Section 53314.9 of the *Act* shown in strike-through text):

(a) Notwithstanding Section 53313.5, at any time either before or after the formation of the district, the legislative body may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds or that work in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a district. The legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds or work in-kind, to repay all or a portion of the funds advanced, or to reimburse the

person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the legislative body, with or without interest, under all of the following conditions:

~~(1) The proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included both in the resolution of intention to establish a district adopted pursuant to Section 53321 and in the resolution of formation to establish the district adopted pursuant to Section 53325.1, or in the resolution of consideration to alter the types of public facilities and services provided within an established district adopted pursuant to Section 53334.~~

~~(2) Any proposed special tax or change in a special tax is approved by the qualified electors of the district pursuant to this chapter. Any agreement shall specify that if the qualified electors of the district do not approve the proposed special tax or change in a special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds.~~

~~(3) (1) Any work in-kind accepted pursuant to this section shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the local agency.~~

(b) The agreement shall not constitute a debt or liability of the local agency.

- (i) For purposes of this Article, property not currently in *Visitor Accommodation Facility* use, or not designated in a City land use plan for *Visitor Accommodation Facility* use, or not the subject of a pending application filed with the City for *Visitor Accommodation Facility* use, shall be deemed "exempt from the special tax" for purposes of sections 53324, 53332, and all other similar provisions of the *Act* and for purposes of section 3114.5 and all other similar provisions of the California Streets and Highways Code.
- (j) For purposes of this Article, the provisions of section 53359.5(b)(13) of the *Act* shall apply only to special taxes levied on the property tax rolls pursuant to section 18-78 of the Monterey City Code. For all other special taxes, instead of the information required by section 53359.5(b)(13), the City shall include in the report the same information with respect to the special taxes that it normally collects and reports regarding the City's Transient Occupancy Taxes.

§ 18-71

Authorized expenditures.

- (a) Notwithstanding Section 53313.5 of the *Act*, a special tax imposed pursuant to this Article may finance the acquisition, construction, reconstruction, replacement, rehabilitation, upgrade and maintenance of

any *conference center facility*, including temporary relocation facilities and improvements during construction of any conference center.

- (b) Revenues from any special tax imposed under this Article may be spent on the following: debt service; lease payments; cost of issuance of securities issued for the purpose of financing or refinancing conference center facilities; replenishment or funding of reserve funds established in connection with the issuance of debt (as defined in the *Act*), administrative costs of the district; prepayment of such securities; direct costs of acquisition, planning, engineering, design, site preparation, and construction of conference center facilities; ongoing capital repairs and maintenance of conference center facilities; and all incidental and administrative costs authorized by the *Act*.

§ 18-72 Hearing, continuances.

All hearings called for under the *Act* shall be required by this Article, except that they may be continued from time to time without further notice, but shall be completed within two (2) years of the original hearing date. For purposes of this Article, the mailing of notices as provided in sections 53322.4 and 53346 and any other similar provisions of the *Act* shall be made to owners and operators of properties that would not be exempt from the special tax if the proposed special tax were being currently levied as proposed.

§ 18-73 Written protests.

All protest procedures set forth in the *Act* shall apply to this Article, except that registered voters, as such, shall have no protest rights under any circumstances, and *Landowner* protests shall be weighted based on number of votes possessed under section 18-74(c) of the Monterey City Code instead of area of land.

§ 18-74 Special tax levy; election; voter qualifications; ballots.

All election procedures set forth in the *Act* shall apply to this Article, with the following exceptions:

- (a) The qualified electors shall in all cases be the *Landowners*.
- (b) The City Clerk shall in all cases be the elections official.
- (c) Votes shall not be allocated on the basis of acreage of real property, but instead shall be allocated to each *Landowner* on the basis of one vote for each dollar of special tax that would have been the obligation of that parcel (as determined by the City Council) if the proposed special tax had been in place for the 12-month period ending at the end of the month which is three months prior to the month in which the resolution calling the special, mailed-ballot election is adopted by the City Council. If a *Visitor Accommodation Facility* was not operated during the whole of that 12-month period, or was operated at less than normal capacity due to remodeling or construction or reconstruction or any other cause, the number of votes to be allocated to the *Landowner* of that parcel shall be determined by the City Council based on estimates presented to the

Council utilizing data from other *Visitor Accommodation Facilities* deemed most similar in size and quality and location (as determined by the City Council) to the *Visitor Accommodation Facility* in question. The Council's decision regarding the number of votes to be allocated to *Visitor Accommodation Facility* properties shall be final.

- (d) The *Landowner*-voters shall be those meeting the definition of *Landowner* as of the close of the public hearing unless the City Clerk is informed, by reliable evidence, of a change in ownership after that time and prior to the election. In that event, the City Clerk shall, at the request of the new *Landowner* submitted with such evidence no later than 24 hours before the deadline for returning ballots, prepare a new ballot and deliver it to the new *Landowner*. The City Clerk shall also, in that event, accept and include in the canvass of the election the ballot submitted by the new *Landowner* rather than the ballot prepared for the former *Landowner*.
- (e) Since the *Landowner*-voters are entitled to a secret ballot, and since ballots are required to contain the names of each *Landowner* and the number of votes each *Landowner* is entitled to cast, and since the number of votes assigned to each *Visitor Accommodation Facility* may be considered to contain proprietary commercial information, the City Clerk shall protect the confidentiality of the ballots. No persons, other than those among the staff and consultants of the City who require access for the purposes of counting and canvassing the ballots, may have access to the ballots at any time, unless by order of a court of competent jurisdiction.

§ 18-75 Notice of Special Tax Lien.

- (a) For purposes of this Article, and to conform to the language of the form of notice of special tax lien, 3114.5 of the California Streets and Highways Code is amended to read as follows (additions shown in italicized text):

(a) This section applies only to community facilities districts.

(b) Within 15 days, in the case of a landowner vote, or 90 days, in the case of a registered voter election, after determination pursuant to Section 53328 of the Government Code that the requisite number of voters is in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district *whose properties are not exempt from the special tax* and shown in the notice, as grantors. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of City of Monterey , State of California, hereby gives notice that a lien to secure payment of a special tax is hereby imposed by the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly describe facilities financed without bonds); (3) providing (briefly describe services being financed). If all or any portion of the proceeds of taxes or bonds of the district are authorized to be used to pay for cleanup of hazardous substances pursuant to subdivision (f) of Section 53313 of the Government Code, the notice shall also contain the following statement in large conspicuous type:

TAXES LEVIED BY THIS DISTRICT MAY BE USED TO PAY FOR CLEANUP OF HAZARDOUS SUBSTANCES.

The special tax is authorized to be levied within Community Facilities District No. ____ that has now been officially formed and the lien of the special tax is a continuing lien that shall secure each annual levy of the special tax and that shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code. The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert the conditions set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. ____ in accordance with Section 3115.5 of the Streets and Highways Code.

The name(s) of the owner(s) and the assessor's tax parcel number (s) of the real property included within this community facilities district and not exempt from the special tax are as follows: (insert name(s) of owner(s) and tax parcel number(s) shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book ____ of Maps of

Assessment and Community Facilities Districts at Page ____, in the office of the County Recorder for the County of _____, State of California which map is now the final boundary map of the community facilities district.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.2 of the Government Code).

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

- (b) Whenever a parcel of property within a conference center facilities district formed pursuant to this Article begins to be used as a *Visitor Accommodation Facility* property, either for the first time or after a period of time when it was not so used, that property shall thereupon become subject to the special tax. The City Clerk shall prepare an amended notice of special tax lien, or an amendment to the notice of special tax lien, that applies to and describes the new *Visitor Accommodation Facility* property in accordance with the California Streets and Highways Code. The City Clerk shall arrange for the recording of the document with the county recorder as provided in the California Streets and Highways Code.

§ 18-76 Application of special tax.

Any special tax imposed pursuant to this Article shall be levied on the property for the use of the property as a *Visitor Accommodation Facility* (or, as the case may be, levied on the leasehold interest of a publicly-owned *Visitor Accommodation Facility* parcel). The special tax shall not, in any year, be levied on residential use for that year. *Visitor Accommodation Facility* use is not residential use.

§ 18-77 Special tax collected with transient occupancy tax.

All special taxes imposed pursuant to this Article shall be due and remitted with the *Operator's* payment of the transient occupancy tax as set forth in Article 35 of this Code. In the event that the *Landowner* is not the *Operator*, the *Landowner* shall cause the *Operator* to remit the special taxes imposed pursuant to this Article with the *Operator's* payment of the transient occupancy tax. Unlike Article 35, however, the special tax is not imposed on the *Transient*, but is imposed on the real property containing the *Visitor Accommodation Facility* or, as the case may be, on the leasehold interest containing the *Visitor Accommodation Facility* if the parcel or parcels containing the *Visitor Accommodation Facility* are publicly owned. The *Operator* may, but is not required to, add the special tax to, and collect it with, the *Rent*. Subject to and as modified by the foregoing, the provisions of §35-12, §35-13, §35-15, §35-15.1, §35-16, §35-17, §35-18, §35-

19, and §35-20 of this Code shall apply to any special tax levied pursuant to this Article. Despite the method of collection and administration, the special tax is distinct from the City's transient occupancy tax and may be enforced, in the event of non-payment, as provided in the *Act*.

§ 18-78 Optional collection of delinquent special taxes on secured property tax roll.

Any special taxes delinquent as of July 1 of any fiscal year, together with any penalties and interest accrued as of that date, may, at the option of the City Council, be placed on the secured property tax roll for the property incurring the special tax obligation in the that fiscal year, where it shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes.

§ 18-79 Refunding bonds, use of savings.

Section 53364.2 of the *Act* notwithstanding, any savings achieved through the issuance of refunding bonds may be used in any manner that is consistent with the purposes for which the special tax was imposed.

§ 18-80 Goals and policies.

The provisions of Section 53312.7 of the Government Code, concerning the adoption of local goals and policies, shall be permissive and not mandatory in connection with any proceedings taken, special tax levied or bonds issued pursuant to this Article.

§ 18-81 Compliance with Article.

Any proceedings taken, special tax levied or bonds issued pursuant to this Article shall not be held invalid for failure to comply with the provisions of this Article provided such failure is not a constitutional defect.

§ 18-82 Conflict of law.

In the event of any conflict between the provisions of this Article or other provisions of the Monterey City Code and the provisions of the *Act*, this Article shall govern.

§ 18-83 Severability.

If any section, subsection, subsection, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such

decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SECTION 3: That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

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

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 7th day of May, 2013, by the following vote:

AYES:	4	COUNCILMEMBERS:	Downey, Haffa, Selfridge, Sollecito
NOES:	0	COUNCILMEMBERS:	
ABSENT:	0	COUNCILMEMBERS:	
ABSTAIN:	0	COUNCILMEMBERS:	
RECUSED:	1	COUNCILMEMBERS:	Della Sala

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

