

ORDINANCE NO. 3559 C.S.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MONTEREY

**AMENDING CHAPTER 19 OF THE MONTEREY MUNICIPAL CODE REGARDING
LICENSES, FEES AND CHARGES**

THE PEOPLE OF THE CITY OF MONTEREY DO ORDAIN AS FOLLOWS:

SECTION 1. Section 19-1 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-1 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meaning respectively ascribed to them by this Section unless the context plainly requires otherwise:

Business. Professions, trades and occupations and every kind of calling carried on for profit or livelihood, including, but not limited to, a "retail business," "jobbing business," "manufacturer," or "wholesale business."

Finance Director. The Finance Director or his or her designee.

Fixed place of business. The premises occupied for the particular purpose of conducting business, and regularly kept open for such purpose with a competent person in attendance for the purpose of attending to such business. Such term shall also include a telephone answering service; provided, that the applicant has a contract or agreement for services for six months or more. Applicants with such agreement or contract shall pay a fee and be licensed in the same manner as other applicants having a fixed place of business.

Gross receipts. The total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, for which a charge is made or credit allowed, whether or not such service, act or employment is done as a part of or in connection with the sale of goods, wares or merchandise. Such term shall include all other receipts, cash, credits and property of any kind or nature except as excluded in this Section, and any amount for which credit is allowed by the seller to the purchaser without any deduction therefor on account of the cost or the property sold, the cost of the materials used, labor or service costs, interest paid or payable, losses or other expenses whatsoever. Excluded from such term shall be cash discounts allowed and taken on sales; any taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser; such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit; any property given by the purchaser to the seller as part of the purchase price and so accepted by the seller for resale; amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected; and that portion of the receipts of a general contractor which represent payments to subcontractors; provided, that such subcontractors are licensed under this Chapter and that the general contractor furnished the Finance Director with the names and addresses of the subcontractors and the amount paid each subcontractor.

This Chapter is intended to tax only those portions of the gross receipts which are attributable to the business activity of the licensee carried on within the City. In any case where a licensee

conducts business activities both inside and outside the City, he or she may upon written application to the Finance Director request the apportionment of those gross receipts which are attributable to business activity within the City and those portions of those gross receipts which are wholly, or partially, exempt from taxation as not being attributable to business activity carried on within the City. In making such application, the Finance Director may require, and the licensee shall be responsible for providing, any business records necessary to determine a fair and equitable apportionment. Any apportionment established shall be reviewed annually by the Finance Director before the renewal of such license.

Jobbing business. Every business conducted solely for the purpose of selling goods, wares or merchandise in job lots to wholesale merchants for resale at wholesale to the trade by such wholesale merchants.

Manufacturer. One engaged in making materials, raw or partly finished, into wares suitable for use.

Quarter. A period of three calendar months. The quarters begin on the first day of July, October, January and April of each year. A quarter shall include fractions thereof.

Retail business. Every business conducted for the purpose of selling, or offering to sell, any good, wares, or merchandise other than as a part of a "Wholesale business" or "Jobbing business."

Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a public street or highway, except devices moved solely by human power or used exclusively upon stationary rails or tracks.

Wholesale business. Every business conducted solely for the purpose of selling goods, wares or merchandise in wholesale lots to retailers for resale at retail to the trade by such retailers.

SECTION 2. Section 19-6 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-6 Applications.

(a) Every person required to have a license under the provisions of this chapter shall make application for the same to the Finance Director, and upon payment of the prescribed tax the Finance Director shall issue a license to such person.

(b) The application shall furnish all information required to enable the Finance Director to properly classify the business of the applicant and determine the proper license tax to be paid by such applicant. Each applicant for a license shall properly fill in one of such applications, sign the same and certify, under penalty of perjury, that the contents thereof are true and correct; or sign and swear to the same before the Finance Director, a deputy finance director or some other person authorized to administer oaths. The Finance Director and his deputies and assistants are authorized to administer oaths in all matters pertaining to the duties of their respective offices. The completed applications shall be submitted to the Finance Director, who shall compute the proper amount of the license tax and shall issue the appropriate license on payment of such amount.

SECTION 3. Section 19-7 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-7 Statements — original applications.

(a) Upon a person applying for the first license to be issued for a newly established business, such person shall furnish to the Finance Director, for his or her guidance in ascertaining the amount of license tax to be paid by the applicant, a written statement upon a form provided by the Finance Director, signed by the applicant and certified under penalty of perjury to be true and correct, or sworn to before the Finance Director, his or her deputies or assistants, or any person authorized to administer oaths, setting forth such information as may be therein required and as may be necessary properly to determine the amount of the license tax to be paid by the applicant.

(b) The applicant shall estimate the annual amount of gross receipts for the purpose of determining the license bracket which will be applicable for the period covered by the license to be issued. Such estimate, if accepted by the Finance Director as reasonable, shall be used in determining the amount of license tax to be paid by the applicant; provided, that the amount of the license tax so determined shall be tentative only and such person shall, within 15 days after the expiration of the period for which such license was issued, furnish the Finance Director with a certified or sworn statement upon a form furnished by the Finance Director, containing the data required to show the licensing bracket properly applicable to such person during the period of such license and the license tax for such period shall be finally ascertained and paid in the manner provided by this Chapter, after deducting from the payment found to be due the amount paid at the time such first license was issued. The Finance Director shall not issue to any such person another license for the same or any other business until such person shall have furnished to him or her the written statement and paid the license tax as required in this Chapter.

(c) Upon filing an application, the applicant shall pay the prescribed minimum license fee, in advance; provided, that such license is issued on an annual basis, it shall be prorated as follows:

1. If the application is made during the quarter beginning July first, 100% of such minimum shall be paid.
2. If such application is made during the quarter beginning October first, 75% of such minimum shall be paid.
3. If such application is made during the quarter beginning January first, 50% of such minimum shall be paid.
4. If such application is made during the quarter beginning April first, 25% of such minimum shall be paid.

SECTION 4. Section 19-8 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-8 Same — renewals.

(a) The applicant for a renewal of a license shall submit to the Finance Director, for his or her guidance in ascertaining the amount of the license tax to be paid by the applicant, a written

statement upon a form to be provided by the Finance Director, signed by the applicant and certified under penalty of perjury to be true and correct, or sworn to before the Finance Director, his or her deputies or assistants, or any person authorized to administer oaths, setting forth such information concerning the applicant's business as the Finance Director may require to enable him or her to ascertain the amount of license tax to be paid by such applicant, which shall be based on the gross receipts from the prior calendar year.

(b) Only one such statement need be filed during any fiscal year (unless the Finance Director requires a corrected statement to be filed) on or before the 1st day of July of each year.

SECTION 5. Section 19-9 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-9 Same — conclusiveness; information to be confidential.

No statement filed pursuant to this Chapter shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the City from collecting by appropriate action such sum as is actually due and payable under this Chapter. Such statement and each of the several items therein contained shall be subject to audit and verification by the Finance Director, his or her deputies or authorized employees of the City, who are hereby authorized to examine, audit and inspect such books and records of any licensee or applicant for license as may be necessary, in his, her or their judgment, to verify or ascertain the license tax due.

All licensees, applicants for licenses, and persons engaged in business in the City are required to permit an examination of such books and records for the purposes of this Chapter.

The information furnished or secured pursuant to Sections 19-7 and 19-8 shall be confidential. The City may withhold any such information constituting a record which is exempt or prohibited from disclosure pursuant to federal or state law including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the California Government Code). Any unwarranted disclosure or use of such information by any officer or employee of the City shall constitute a violation of this Code and such officer or employee shall be subject to the penalty provisions of this Code.

SECTION 6. Section 19-10 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-10 Same — failure to file; corrected statements; hearing.

If any person fails to file any required statement within the time prescribed, or if after demand therefor made by the Finance Director such person fails to file a corrected statement, the Finance Director may determine the amount of license tax due from such person by means of such information as the Finance Director may be able to obtain.

In such case, the Finance Director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Mail, postage prepaid, to the last known address of the person so assessed. Such person may, within 10 days after the mailing or serving of such notice make application, in writing, to the Finance Director for a hearing on the amount of the license tax. If such application is timely made, the Finance Director shall cause the matter to be set for hearing within 15 days. The Finance Director shall give at least 10 days' notice to such person of the time and place of hearing as prescribed above for service of notice of assessment. The Finance Director shall consider all evidence produced, and written notice of

the findings thereon, which findings shall be final as to the City and subject to judicial review under Code of Civil Procedure section 1094.5, shall be served upon the applicant as prescribed above for the service of the notice of assessment.

SECTION 7. Section 19-12 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-12 Same — disabled persons and veterans.

(a) Any person who is unable to obtain a livelihood by manual labor due to physical disability may, at the discretion of the Finance Director, obtain a license to hawk or peddle any goods, wares or merchandise without payment of any license tax or fee, by applying to the Finance Director and producing a certificate from a physician showing the applicant to be physically disabled.

(b) Any person who is honorably discharged or honorably relieved from the United States Armed Forces and who is a resident of California may, at the discretion of the Finance Director, obtain a license to hawk or peddle any goods, wares or merchandise owned by him or her, excluding intoxicating beverages and liquor, without payment of any license tax or fee, by applying to the Finance Director and producing proof of honorably discharged or honorably relieved status.

SECTION 8. Section 19-17 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-17 Time and Manner of payment.

All license taxes under this Chapter shall be paid in advance in the legal currency of the United States at the office of the Finance Director.

The annual licenses shall be due and payable to the City on the 1st day of July of each year.

SECTION 9. Section 19-18 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-18 Penalties for delinquent payment.

For failure to pay a license tax when late and unpaid as of 12:00 midnight on August 15 of each year, the Finance Director shall add a penalty of 20%, and an additional penalty of 10% on the 15th of each month thereafter until the tax and penalty are paid; provided, that the amount of such penalty to be added shall in no event exceed 50% of the amount of the license tax due. In the event that August 15th falls on Saturday, Sunday or a holiday at such time city offices are closed, the last date to make full payment to avoid the penalty will become the first working day following the Saturday, Sunday or holiday. Failure of the City to provide a return form does not excuse a business operator from the obligation to timely remit the tax pursuant to this Article.

In the case of a newly established business, no penalty shall be imposed if the license tax is paid within 30 days after the commencement of operation. Otherwise, 20% will be added at the end of the first 30 days and 10% added every 30 days thereafter; provided, that the amount of such penalty to be added shall in no event exceed 50% of the amount of the license tax due.

SECTION 10. Section 19-19 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-19 Issuance; contents.

It shall be the duty of the Finance Director to prepare and issue a license under this Chapter for every person liable to pay such license tax, and to state in each license the amount thereof, the period of time covered thereby, the name of the person to whom issued, the business licensed and the location or place where such business is to be carried on.

SECTION 11. Section 19-20 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-20 Transferability.

(a) No license under this Chapter shall be valid except for the location for which the original application was made and for which the license issued. If a licensed business moves to another location, the original license shall be presented to the Finance Director, together with a statement of such proposed relocation. The Finance Director, after submitting the statement of removal to the Planning and Fire Departments for approval, may approve the transfer of the license to the new location.

(b) No license granted or issued under any provisions of this Chapter shall be in any manner transferred or assigned or authorize any person other than is therein mentioned or named to do business.

(c) Notwithstanding subsection (b) above, a license granted or issued under any provision of this Chapter may be transferred or assigned to the next of kin of a licensee, including a child, spouse, or registered domestic partner, by applying to the Finance Director and producing proof of next of kin status.

SECTION 12. Section 19-21 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-21 Issuance of duplicates; mistakes by Finance Director.

The Finance Director shall make a charge for each duplicate license issued to replace any license issued under the provisions of this Chapter which has been lost or destroyed. Such charge shall be in an amount set from time to time by resolution of the City Council. In no case shall any mistake made by the Finance Director in stating the amount of the license tax prevent or prejudice the collection by the City of what shall be actually due from anyone carrying on a business subject to a license under this Chapter.

SECTION 13. Section 19-22 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-22 Refunds.

All licenses shall be issued from the period of time set forth in the license and no licensee shall be entitled to the refund of any portion of the tax paid by reason of the termination of such licensed activity before the expiration of the term for which such license was issued.

Any business required to cease activity within the City as the result of public acquisition of the premises by any governmental agency, shall be entitled to a refund of an amount prorated as to the time remaining under the license when the business activity ceases. Such licensee shall file a verified claim with the Finance Director stating the date of and reason for cessation of business activity.

SECTION 14. Section 19-23 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-23 Collection of taxes by court action.

The amount of any license tax imposed by this Chapter shall be deemed a debt to the City, and any person carrying on any business mentioned in this Chapter without having a license from the City so to do shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of license tax imposed on such business, together with all penalties then due thereon in any such action, and any cost the City reasonably incurs to collect the tax, including attorneys' fees which, if judgment is recovered, shall be included and assessed as recoverable costs in such action.

SECTION 15. Section 19-24 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-24 Powers and duties of Finance Director.

The Finance Director shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter. The Finance Director shall have the power to adopt rules and regulations not inconsistent with the provisions of this Chapter for the purpose of carrying out and enforcing the provisions of this Chapter. A copy of any such rules and regulations shall be on file and available for public examination in the Finance Director's office.

SECTION 16. Section 19-25 of Article 1 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-25 Enforcement of chapter.

All police officers are hereby appointed inspectors of licenses and in addition to their several duties as police officers are hereby required to examine all places of business and persons in their respective beats liable to pay a license tax to see that such licenses are taken out; and shall have and exercise the following powers and duties:

- (a) To make arrests and/or issue citations for the violation of any of the provisions of this Chapter.
- (b) To enter free of charge, at any time, any place of business for which a license is required by this Chapter and to demand the exhibition of such license for the current term by any person engaged or employed in the transaction of such business, and if such person shall then and there fail to exhibit such license such person shall be liable to the penalty provided for a violation of this Chapter.

SECTION 17. Section 19-27 of Article 2 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-27 License tax based on gross receipts generally.

Unless otherwise specifically provided for in this Chapter, every person carrying on a business in the City shall pay an estimated annual license tax based on the following bracket system:

- (a) Gross receipts of \$25,000 or less per annum, the sum of \$26.

(b) Gross receipts in excess of \$25,000 per annum, the sum of \$26 plus 0.15% of gross receipts in excess of \$25,000 per annum.

For persons with a fixed place of business in the City, there shall be a rebuttable presumption that all gross receipts of such person are included in the gross receipts for the purpose of computing the license tax.

For purposes of this Section, "every person carrying on a business in the City" shall include every person entering into a contract with the City, including without limitation contracts for public works, consultant services, and franchise agreements.

SECTION 18. Section 19-54 of Article 2 of Chapter 19 of the Monterey Municipal Code is hereby amended to read as follows:

Sec. 19-54 Public utilities.

Every person engaged in the business of operating a bus company, express company, telegraph, telephone, water, gas or electric company or other public utility within the City shall be required to obtain a license and pay the license tax prescribed by Section 19-27; provided, that the provisions of all ordinances with reference to the granting of a franchise to such public utility and requiring the payment of a franchise tax by it shall remain in full force and effect.

SECTION 19. Sections 19-14, 19-28, 19-29, 19-33, 19-34, 19-35, 19-36, 19-37, 19-42, 19-43, 19-46, 19-48, 19-56, and 19-61 of Articles 1 and 2 of Chapter 19 of the Monterey Municipal Code are hereby repealed in their entireties.

SECTION 20. Effective Date of Ordinance.

This Ordinance shall take effect 10 days after the vote therefor is declared by the City Council, or on April 1, 2017, whichever occurs later.

SECTION 21. Effect of Ordinance.

It is the intent of the People that the Monterey Municipal Code Sections affected by this Ordinance shall not be considered repealed and reenacted in their amended form; that the portions which are not altered are to be considered as having been the law from the time when they were enacted; that the new provisions are to be considered as having been enacted at the time of the amendment; and that the omitted portions are to be considered as having been repealed at the time of the amendment.

SECTION 22. Amendment of Ordinance.

This Ordinance may be repealed or amended by the City Council without a vote of the People except as required by law, as for tax increases as that term is defined in Government Code section 53750.

SECTION 23. Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unenforceable by a court of competent jurisdiction for any reason, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The People of the City of Monterey hereby declare that they would have adopted

each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

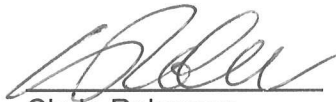
SECTION 24. General Tax; Majority Approval; Effective Date

The tax imposed by this Ordinance is a general tax for general governmental purposes. If a majority of voters casting votes on the question are in favor of the ballot measure regarding this Ordinance, this Ordinance shall be adopted upon the date the vote therefor is declared by the City Council and shall go into effect 10 days thereafter in accordance with California Elections Code Section 9217 and Section 2.6 of Article 2 of the Monterey City Charter.

SECTION 25. Execution of Ordinance.

The People of the City of Monterey hereby authorize the Mayor and City Clerk of the City to execute this Ordinance to reflect its adoption at the November 8, 2016 election.

I hereby certify that the foregoing ordinance was duly adopted by a majority of the voters of the City casting votes on the question on November 8, 2016.



Clyde Roberson
Mayor

1-6-17
(date)

ATTEST:



Bonnie Gawf
City Clerk

Jan 6, 2017
(date)