

ORDINANCE NO. 3636 C.S.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY
UPDATING ADMINISTRATIVE PROVISIONS OF THE TRANSIENT OCCUPANCY TAX
ORDINANCE**

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

SECTION 1:

WHEREAS, 100% of transient occupancy tax is paid by guests of hotels or other lodging facilities. The current rate of transient occupancy tax is 12%, of which 16% is dedicated to the Neighborhood and Community Improvement Program (NCIP), and 84% funds essential City services such as the library, senior and youth recreation programs, police, fire, parks, forestry maintenance, disaster preparedness and more;

WHEREAS, Monterey City Code section 35-22.1 authorizes Chapter 35, Article 3 to be repealed or amended by the City Council without a vote of the people except as required by law, and except for tax increases as that term is defined in Government Code section 53750, and these amendments do not require a vote of the people;

WHEREAS, these amendments reflect that transient occupancy tax does not apply to federal employees traveling on business, even if their room charges are paid directly by the employee and reimbursed by the federal government. (California Credit Union League v. City of Anaheim, 95 F.3d 30 (9th Cir. 1996)). Transient occupancy tax does apply to state employees traveling on business even if their room charges are paid directly by the governmental employer. (See 75 Ops.Cal.Atty.Gen 86 (1992); 46 Ops. Cal.Atty.Gen 16 (1965));

WHEREAS, the only way that cities are able to obtain the needed information regarding transient occupancy tax is by the ordinance's recordkeeping requirement. The recordkeeping requirement bears a rational relationship to a legitimate city purpose, which is to enable the city to assess and to collect transient occupancy tax. The burden of complying with this recordkeeping requirement is not unduly oppressive or costly since it is only a matter of

maintaining the records for three years, and having them available for inspection by the City Finance Director or their agent at reasonable times. (City of Vacaville v. Pitamber, 124 Cal.App.4th 739 (2004).)

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA)(CCR, Title 14, Chapter 3 (“CEQA Guidelines”), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: The above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 3: Monterey City Code, Chapter 35, Article 3, Section 35-12 is hereby amended to read as follows:

Sec. 35-12. Exceptions from Imposition of Tax.

a. No tax shall be imposed pursuant to Chapter 35, Article 3 upon:

1. Any federal officer or employee when on official business.

2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

b. A claim for an exemption must be made at the time rent is collected, and under penalty of perjury on a form designated by the City, in order for the exemption to apply.

SECTION 4: Monterey City Code, Chapter 35, Article 3, Section 35-15 is hereby amended to read as follows:

Sec. 35-15. Reporting and remitting of collections.

a. Each operator of a visitor accommodation facility shall, on or before the 15th day of each month, remit the full amount of taxes collected for the previous month with the return form provided by the City. Returns are timely if received on or before the 15th or if postmarked by the 15th. In the event that the due date falls on Saturday, Sunday or a holiday, the due date will become the first working day following the Saturday, Sunday or holiday. Failure of the City to provide a return form does not excuse the operator from the obligation to timely remit the tax pursuant to this Article.

b. The Finance Director may establish shorter reporting periods for any visitor accommodation facility if deemed necessary in order to ensure collection of the tax and may require further information in the return. The Finance Director may also require that an operator who is delinquent in payment of this tax be placed on a direct deposit system with taxes collected deposited directly into the City of Monterey's bank account on a monthly, weekly, or daily basis.

c. All taxes collected by an operator pursuant to this Article are considered public monies and the sole and separate property of the City from the time of collection and shall be received and held in trust for the account of the City until payment is made by the operator to the Finance Director.

SECTION 5: Monterey City Code, Chapter 35, Article 3, Section 35-15.1 is hereby amended to read as follows:

Sec. 35-15.1. Remitting and Reporting Requirements upon Cessation of Business.

Whenever an operator ceases to operate or otherwise sells or disposes of their business, any tax payable to the City shall become due and payable within ten days of cessation of business, and the operator shall immediately make a report and pay the tax due. If the operator fails to pay the tax due within ten days of cessation of business, and the business was sold or transferred to a successor, the successor shall be liable to the City for the amount of tax due

and any penalty. Either the seller or the purchaser may satisfy the tax obligation owed to the City within ten days of cessation of business, but the successor operator is ultimately responsible for the tax.

SECTION 6: Monterey City Code, Chapter 35, Article 3, Section 35-16 is hereby amended to read as follows:

Sec. 35-16. Penalties and Interest.

a. Original delinquency. Any operator who fails to remit any tax imposed by the Article within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax or the estimated tax.

b. Continued delinquency. Any operator who fails to remit any delinquent taxes on or before a period of 30 days following the date on which the taxes first became delinquent shall pay a second delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

c. Fraud. If the Finance Director determines that the nonpayment of any remittance due under this Article is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections (a) and (b) of this Section.

d. Compound Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Article shall pay interest at the rate of 1% per month or fraction thereof, compounded, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

e. Penalties. Every penalty imposed and such interest that accrues under the provisions of this Section shall become a part of the tax required to be paid.

f. Audit Deficiency. If, upon audit by the City, an operator is found to be deficient in either its return or its remittance or both, the Finance Director shall invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within 30 days of the date of the invoice, an additional 10% penalty shall be added to the original deficiency. In addition to the penalties imposed, any operator who fails to remit payment of billed audit deficiencies within 30

days of the date of the invoice shall pay interest at the rate of 1% per month or fraction thereof, compounded, on the amount of the tax, exclusive of penalties.

SECTION 7: Monterey City Code, Chapter 35, Article 3, Section 35-17 is hereby amended to read as follows:

Sec. 35-17 Failure to collect and report tax; determination of tax by Finance Director.

a. If any operator fails or refuses to collect the tax imposed by this Article, or to make, within the time provided in this Article, any report and remittance of such tax or any portion thereof, the Finance Director shall proceed in such manner as they may deem best to obtain facts and information on which to base an estimate of the tax due. The Finance Director shall determine and assess against such operator the tax, interest, and penalties provided for by this Article. The Finance Director shall give a notice of the amount so assessed by serving it personally, by e-mail, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address.

b. Within ten days after service of such notice, the operator may request, in writing, to the Finance Director for a hearing on the amount assessed. If the operator does not request a hearing within the time prescribed, the tax, interest, and penalties determined by the Finance Director shall become final and conclusive and immediately due and payable.

c. If a request for hearing is made, the Finance Director shall give not less than five days written notice in the manner prescribed in this Section to the operator of the time and place of the hearing before the Finance Director, or their designee. At such hearing, the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing, the Finance Director shall determine the proper tax to be remitted and shall thereafter give written notice to the operator in the manner prescribed in this Section of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in Section 35-18.

SECTION 8: Monterey City Code, Chapter 35, Article 3, Section 35-18 is hereby amended to read as follows:

Sec. 35-18. Appeals.

Any operator aggrieved by a decision of the Finance Director with respect to Section 35-16(c) Fraud, Section 35-16(f) Audit Deficiency, and Section 35-17 Failure to Collect and Report Tax, may appeal to the Appeals Hearing Board by filing a written notice of appeal with the City Attorney's Office within 15 days of the service of the determination of tax due. All other decisions of the Finance Director are final. The Clerk of the Board shall fix a time and place for hearing such appeal, and the City shall give notice in writing by serving it personally, by e-mail, or by depositing it in the United States mail, postage prepaid, addressed to such operator at the last known place of address. At the hearing the operator and the Finance Director shall have an opportunity to explain their case and introduce evidence. Formal rules of evidence do not apply in proceedings under this section and the Board may consider any evidence or information deemed relevant and reasonably reliable. The findings of the Appeals Hearing Board shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

SECTION 9: Monterey City Code, Chapter 35, Article 3, Section 35-19 is hereby amended to read as follows:

Sec. 35-19. Records to be kept.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this Article to keep and preserve, for a period of three years, not including the present calendar year, all records as may be necessary to determine the amount of such tax the operator may have been liable for the collection of and payment to the City. The Finance Director and authorized agents shall have the right to inspect such records at all reasonable times. The records maintained by the operator under this section shall include, but are not limited to, the following:

(a) A written report that includes daily records of all of the following:

1. Name of person occupying the room;
2. Number or other identifier of the room occupied;
3. Room rate;
4. Amount charged, if any, for the occupancy;

5. Amount of transient occupancy tax collected; and

6. Method of payment.

(b) A written record of each occupancy for which an exemption is claimed, including the name of the person occupying the room, date(s) of occupancy, reason(s) for the exemption, and the exemption claim form required under Section 35-12.

All records which may be necessary to inspect shall be kept within the City or shall be produced within ten (10) working days of written notice at the business location within the City.

In the event that records are not produced upon request, or, such records are not reasonably able to be audited, tax, interest, and penalties will be levied based upon the average room rate and occupancies for similar properties within the City during the audit period. Further, and without limitation, any operator who does not produce records following written notice as set forth herein shall pay, as a civil penalty, in addition to any tax, penalty or interest, the sum of \$100.00 per day for each business day the records are not produced for audit.

Further, the City may issue a subpoena pursuant to Government Code section 37104, et. seq., as may be amended, or utilize any other lawful means to access and inspect the records of an operator who refuses to make such records available for inspection.

SECTION 10: Monterey City Code, Chapter 35, Article 3, Section 35-20 is hereby amended to read as follows:

Sec. 3-20. Refunds.

Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this Article, may be refunded 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.

SECTION 11: Monterey City Code, Chapter 35, Article 3, Section 35-21 is hereby amended to read as follows:

Sec. 35-21 Exhaustion of Administrative Remedies

No person may commence or maintain any proceeding, or assert any legal or equitable claim of any kind, whether affirmatively or by defense, against the City challenging or disputing in any way the imposition, assessment or collection of any tax, interest, or penalty, unless the person first deposits with the City the full amount of any tax, interest or penalty imposed or assessed or otherwise challenged or claimed to be in dispute. Only after payment of the full amount of any tax, including interest and any penalties assessed or imposed, claimed to be illegal or otherwise improper, may a person maintain an action to recover the tax and other amounts paid and in dispute, with interest, in such manner as provided by law.

SECTION 12: Monterey City Code, Chapter 35, Article 3, Section 35-22 is hereby added to read as follows:

Sec. 35-22. Collection by court action.

(a) Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the City.

(b) Failure of an operator to collect tax required to be paid by a transient shall not excuse the operator from the operator's obligation under this chapter. Any such tax collected by an operator that has not been paid to the City shall be deemed a debt owed by the operator to the City. Any tax required to be paid by any transient that is not collected by the operator is deemed a debt owed by the operator to the City.

(c) Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Monterey for the recovery of such amount.

(d) If any amount required to be paid to the City under this chapter is not paid when due, the Finance Director may, within four years after the amount is due, file an action to collect any unpaid amount and seek a judgment to enforce collection of the debt. All lawful means of judgment collection shall be available to the Director of Finance, including but not limited to a lien on real property.

SECTION 13: the existing Monterey City Code, Chapter 35, Article 3, Section 35-22.1 is restated in full and renumbered as Section 35-22.2, and Section 35-22.1 is hereby added to

read as follows:

Sec. 35-22.1. Violations.

Any person violating any provision of this Article shall be subject to administrative citations as provided by Section 1-9, et. seq. of this Code.

SECTION 14: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 15: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 16th day of March by the following vote:

AYES:	3	COUNCILMEMBERS:	Albert, Haffa, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	2	COUNCILMEMBERS:	Smith, Williamson
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:

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 Mayor of said City

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 City Clerk thereof