

**ORDINANCE NO. 3659 C.S.**

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

**UPDATING ADMINISTRATIVE PROVISIONS OF THE TRANSIENT OCCUPANCY TAX  
ORDINANCE THAT DO NOT REQUIRE VOTER APPROVAL**

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WHEREAS, Monterey City Code section 35-22.2 authorizes Chapter 35, Article 3 to be repealed or amended by the City Council without a vote of the people except as required by law, and except for tax increases as that term is defined in Government Code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, the proposed amendments clarify that in order to ensure the timely receipt of taxpayer funds the amount of any taxes in dispute must be deposited with the City prior to an administrative appeal, the length of time that records must be kept for auditing purposes is extended from three years to four years to match the statute of limitations, and wording has been updated to be consistent throughout the ordinance;

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, Section 15(a) is hereby amended to read as follows:

“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 a completed 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.”

SECTION 4: Monterey City Code, Chapter 35, Section 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 calendar 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 email, 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 decision 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. If the Board upholds the appeal, or a portion thereof, within 30 days of the Board’s decision the City shall refund the deposited amount of the tax, interest or penalty as specified in the decision.”

SECTION 5: Monterey City Code, Chapter 35, Section 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 four 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 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 6: Monterey City Code, Chapter 35, Section 20 is hereby amended to read as follows:

“Sec. 35-20. Refunds.

- a. Claim Required. 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, the amount may be refunded as provided in subsections (b) and (c) below; provided, that a claim in writing is filed in accordance with Section 1-8.2 stating under penalty of perjury the specific grounds upon which the claim is founded and within a period of one year from the date of the claimed overpayment.
- b. Claim by Operator. 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, however, that neither a refund nor a credit shall be allowed unless

the amount of the tax so collected has either been refunded to the payor or credited to rent subsequently payable by the payor to the operator.

- c. Claim by Payor. A payor may obtain a refund of taxes overpaid, 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) above, but only when the tax was paid by the payor directly to the City, or when the payor having paid the tax to the operator, establishes to the satisfaction of the Finance Director that the payor has been unable to obtain a refund from the operator who collected the tax.”

SECTION 7: Monterey City Code, Chapter 35, Section 21 is hereby amended to read as follows:

“Sec. 35-21. Condition Precedent for Administrative, Legal, or Equitable Claims.

No person may commence or maintain any proceeding, or assert any administrative, 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 imposed under this Article, 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 8: Monterey City Code, Chapter 35, Section 20 is hereby amended 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 Article 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 Article. 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 Article 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 Article 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 9: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 10: 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 21st day of March, 2023, by the following vote:

AYES:	4	COUNCILMEMBERS:	Barber, Garcia, Haffa, Williamson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	1	COUNCILMEMBERS:	Smith
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:  
  
 \_\_\_\_\_  
 Mayor of said City

DocuSigned by:  
  
 \_\_\_\_\_  
 City Clerk thereof