

COUNTY OF MONTEREY
CHAPTER 5.40
UNIFORM TRANSIENT OCCUPANCY TAX
As amended June 19, 2007

5.40.010 TITLE

The ordinance codified in this chapter shall be known as the Uniform Transient Occupancy Tax Ordinance of the county of Monterey. (Ord. 3668, 1993; Ord. 3651, 1992; Ord. 1404, Section 1, 1965.)

5.40.020 DEFINITIONS.

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter.

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, time share or condominium conversion facility that is zoned "Visitor Serving", studio, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

"Hotel" does not mean any of the following: Any hospital, sanitarium, medical clinic, convalescent home, rest home, home for aged people, foster home, or other similar facility operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained or housed under legal restraint; any housing owned or controlled by an educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institution, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by an organization having qualification for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling, house or other individually owned single-family dwelling unit rented only occasionally and incidentally to the normal occupancy by the owner or family; provided that the burden of establishing that the housing or facility is not a hotel as defined in this Section shall be upon the operator of the facility, who shall file with the Tax Collector such information as the Tax Collector may require to establish and maintain such status.

B. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other

capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as a principal. However, compliance with the provisions of this Chapter by either the principal or the managing agent shall be considered to be compliance by both.

If a time share or condominium conversion allows or results in transient occupancy in a facility zoned “Visitor Serving, an onsite operator must be present. Such onsite operator shall be charged with all duties and responsibilities under this Chapter and shall serve as a single point of contact between transient occupants and the Tax Collector.

D. “Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

E. “Rent” means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, including but not limited to mandatory facility or grounds fees or mandatory gratuity or administrative fees retained by the operator, without any deduction therefrom whatsoever. Rent includes a non-refundable deposit or guaranteed no-show fee paid by or on behalf of any person, whether or not the person actually exercises the right to occupancy by using or possessing any room or rooms, or portion thereof, in any hotel for dwelling, lodging, or sleeping purposes.

If a transient is not charged for occupancy of a time share or condominium conversion unit that is zoned “Visitor Serving”, rent shall be based on the then applicable daily rate for a comparable unit in the same facility.

Rent does not include:

1. A non-refundable deposit or guaranteed no-show fee for conferences or other group-related activities, regardless of whether all or any portion of that non-refundable deposit or guaranteed no-show fee includes any consideration for rooms reserved. A conference or other group-related activity is defined as rental of a block of five or more rooms for the same or substantially the same time period.

2. The value of optional or complimentary products or services offered to guest of a hotel, if the products or services are included in a package rate, provided:

a. A reasonable allocation of the value of separate optional or complimentary products or services. Such products or service shall be separately identified on the guest receipt; and

b. No tax pursuant to this Chapter is charged or collected by the operator on the value of products or services.

F. “Tax” means the transient occupancy tax provided for in this Chapter.

G. “Tax Collector” means the Monterey County Treasurer-Tax Collector.

H. “Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

(Ord. 5073 2007; Ord. 3668, 1993; Ord 3651 section 1, 1992)

5.40.030 TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject and shall pay a tax in the amount of ten and one-half (10.5) percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the operator or to the County.

A. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Collector may require that such tax shall be paid directly to the Tax Collector.

B. Any tax imposed by this Chapter which is itemized on the guest receipt shall be remitted to the County. The amount allocated to room rental rates, number of rooms rented, tax, and products or services shall be readily identifiable in the operator's accounting records. The allocation to non-rent items shall not exceed the prices normally charged for those items.

C. Any operator offering a package rate must separately identify on the guest receipt the room portion of the package rate, the transient occupancy tax applicable to the room portion of the package rate, the non-room portion of the package rate, and any transaction and use tax (sales tax) on the non-room portion of the package rate. The operator shall bear the burden of proving that the allocation of taxes between the room portion and the non-room portion of the package rate was properly made and that the proper amounts of taxes were collected and remitted to the appropriate agencies. Allocation of room rents from the package amount shall not be below prevailing room rates for the same area as determined by the Tax Collector or County Auditor-Controller. (Ord. 5073 2007; Ord. 3668, 1993; Ord. 3651 Section 1, 1992; Ord. 3044, 1985; Ord. 2424 Section 1, 1978; Ord. 2106, 1975; Ord. 2049, 1974; Ord. 1899, 1972; Ord. 1607 (part), 1968; Ord. 1404 Section 36, 1965.)

5.40.040 EFFECTIVE AND OPERATIVE DATES

This chapter became effective March 31, 1965, except that the tax imposed by this chapter became operative and was imposed on July 1, 1965, and did not apply prior to said date. (Ord. 3668, 1993; Ord. 1404 Section 18, 1965.)

5.040.050 EXEMPTIONS

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the county to impose the tax provided for in this chapter;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

3. Any person for whom emergency housing is provided pursuant to a voucher issued by a non-profit, tax exempt agency or organization;

4. Employees of insurance companies while performing insurance-related business. This exemption shall apply only to those insurance companies which do business in California and which pay the California State Gross Premiums Tax annually pursuant to California Constitution Article XIII, Section 28, in lieu of all other taxes.

5. Employees of federal credit unions while performing credit union business. This exemption shall apply only to those credit unions organized and operating under the Federal Credit Union Act.

B. No exemption shall be granted except upon a claim for exemption made at the time rent is collected, and under penalty of perjury, upon a form prescribed by the tax collector.

C. Federal employees on official business are eligible for exemption from the tax. The exemption claim shall not be approved unless the person requesting the exemption shows satisfactory credentials reflecting current performance of official duties.

1. A copy of the credentials of the person requesting the exemption shall be attached to each exemption claim;

2. A separate exemption claim must be filed for each occupied room subject to rental for which the exemption is requested.

D. State and local government employees, contractors, federal government chartered companies, and subcontractors of any level of government are not eligible for exemption from the tax.

E. Original exemption claim forms and all supporting documents must be retained by the operator for a period of three years in accordance with Section 5.40.140. (Ord. 3809, 1995; Ord. 3759, 1994; Ord. 3668, 1993; Ord. 3651, Section 3, 1992; Ord. 1472 (part), 1966; Ord. 1404 Section 4, 1965.)

5.40.055 ADJUSTMENTS

The following reductions to room revenue shall be permitted:

A. Complimentary rooms provided for purposes of advertising or public relations;

B. Adjustments to room rates due to customer complaints regarding unsatisfactory services or goods;

C. Travel or other special discounts offered by the hotel;

D. Corrections of errors or disputed room charges. All reductions to room revenue shall be supported by documentation authorizing the transaction. Such documentation shall include the date, name of guest, room number, dollar amount of adjustment, the reason for the adjustment, and the signature of the authorizing person. (Ord. 3668, 1993; Ord. 3651, Section 4, 1992.)

5.040.060 OPERATOR'S DUTIES

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided by this chapter. (Ord. 3668, 1993; Ord. 1404 Section 5, 1965.)

5.40.065 TAX COLLECTOR'S DUTIES

The Tax collector shall:

- A. Provide to all operators of hotels forms for reporting of the tax;
- B. Provide information and clarification to any operator concerning the provisions of this chapter;
- C. Receive and record all taxes remitted to the county as provided in this chapter;
- D. Maintain records of operator reports submitted and taxes collected pursuant to this chapter;
- E. Assess penalties and interest to operators whenever reports or tax remittances are delinquent; (Ord. 3651 Section 1, 1992.)
- F. Determine amounts and enforce collection pursuant to Section 5.40.100 whenever operators have failed or refused to report or remit taxes;
- G. Issue refunds as provided in Section 5.40.150. (Ord. 3668, 1993; Ord. 3651, Section 5, 1992.)

5.040.070 REGISTRATION-CERTIFICATE

Within thirty days after commencing business, each operator of any hotel renting occupancy to transients shall register said hotel with the tax collector and obtain from the tax collector a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. The certificate shall, among other thing, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;

D. “This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the tax collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the tax collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this county. This certificate does not constitute a permit. (Ord. 3668, 1993; Ord. 1404 Section 6, 1965.)

5.40.080 REPORTING AND REMITTING

A. Each operator, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax collector, shall make a return to the tax collector, on forms provided by the him, of the total rents charged and the amount of tax imposed thereon by Section 5.40.030. At the time the return is filed, the full amount of such tax shall be remitted to the tax collector. The tax collector may establish shorter report periods for any certificate holder if he deems necessary in order to insure collection of the tax and he may require further information is required in the return.

Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be considered public monies at the time of collection and separate property of the county and shall be held in trust for the account of the county until payment thereof is made to the tax collector.

B. In the event a federal, state or local declared disaster affecting the unincorporated area of Monterey County results in the physical impairment of public infrastructure, including, but not limited to, roads, streets, and other public highways, and such impairment prevents public access to hotel facilities covered by this chapter, the Tax Collector may extend the period of time, without penalty, for reporting and remitting taxes. In such instances, the reporting date and payment date shall extend to the end of the month after the next succeeding calendar quarter following the expiration date of the declared disaster. (Ord. 3759, 1994; Ord. 3668, 1993; Ord. 1607 (part), 1968; Ord. 1404 Section 7, 1965.)

5.40.090 PENALTIES AND INTEREST

A. Original Delinquency: Any operator who fails to remit any tax imposed by this Chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency: Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10)

percent of the amount of the tax, calculated on a non-compounding basis, in addition to the amount of the tax and the ten (10) percent penalty first imposed.

C. Fraud: If the Tax Collector determines that the nonpayment of any remittance due under chapter is due to fraud, a penalty of twenty-five (25) percent 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. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Chapter within thirty (30) day of delinquency shall pay simple interest at the rate of one and one half percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent.

E. Penalties Merged With Tax: Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax required by this Chapter to be paid. (Ord 5073, 2007; Ord. 3668, 1993; Ord. 1404 Section 8, 1965.)

5.40.100 FAILURE TO COLLECT AND REPORT - DETERMINATION OF AMOUNT

A. If any operator fails or refuses to collect the tax imposed by this chapter, any report and remittance of the tax or any portion thereof, the tax collector shall proceed in such manner as may be deemed appropriate to obtain facts and information on which to base an estimate of the tax due.

B. As soon as the tax collector procures such facts and information needed to base the assessment of any tax imposed by this chapter, and payable by any operator who has failed or refused to collect the same, and to make such report and remittance, the tax collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax collector shall give a notice of the amount so assessed by serving it personally or by depositing in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address.

C. Such operator, within ten days after the serving or mailing of such notice, may make application in writing to the tax collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax collector shall become final and conclusive and immediately due and payable. If such application is made, the tax collector shall give not fewer than five days written notice in the manner prescribed in this chapter to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for tax, interest and penalties.

D. At the hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After the hearing, the tax collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this chapter of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 5.40.130. (Ord. 3668, 1993; Ord. 1404 Section 1965.)

5.40.110 FAILURE TO COLLECT AND REPORT -SUCCESSORS OR ASSIGNEES LIABLE FOR PAYMENT

If any operator liable for any amount under this chapter sells or quits their business, the successors or assignees shall withhold a sufficient portion of the purchase price to cover the amount for which the operator is liable until the former owner produces either a receipt from the tax collector showing that payment has been made or a certificate stating that no amount is due. (Ord 3668, 1993; Ord. 1404, Section 10, 1965.)

5.40.120 FAILURE TO COLLECT AND REPORT - NOTICE TO SUCCESSOR - LIMITED LIABILITY

A. If the purchaser of a business fails to withhold tax from purchase price as required by Section 5.40.110, the purchaser shall be personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money.

B. Within thirty days after receiving a written request from the purchaser for registration certificate, the tax collector shall either issue the certificate or mail notice to the purchaser, at the address as it appears on the records of the tax collector, of the amount that must be paid as a condition of issuing the certificate. Failure of the tax collector to timely mail the notice will release the purchaser from any further obligation to withhold taxes or penalties from the purchase price as provided in Section 5.40.110.

C. The time within which the obligation of a successor may be liable shall begin at the time the operator sells a business or at the time that the determination against the operator becomes final, whichever event occurs later. (Ord. 3668, 1993; Ord. 1404, Section 11, 1965.)

5.40.130 APPEAL PROCEDURE

Any operator aggrieved by any decision of the tax collector with respect to the amount of tax, interest and penalties, if any, due under this chapter may appeal to the board of supervisors by filing a notice of appeal with the county clerk within fifteen days of the serving or mailing of the determination of tax due. The board of supervisors shall fix a time and place for hearing such appeal, and the county clerk shall give notice in writing to such operator at the last known place of address. The finding of the board of supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 3668, 1993; Ord. 1404, Section 12, 1965.)

5.40.140 RECORDS

A. It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this Chapter to keep and preserve, for a period of three years, all records which are necessary to determine and verify the amount of the tax imposed by this Chapter and for which the operator is liable to collect and remit to the County. At a minimum, the records deemed necessary for this determination and verification shall include a cash receipts ledger, detailed record of room revenues, or other summary acceptable to the County Auditor-Controller of the operator's monthly and quarterly revenues showing room registrations (including the name and address of each registered transient), registration cards, calendar of advance registrations, copies of exemptions claimed, and pre-numbered payment folios or other similar documents showing the amount of payment for occupancy and separately stating the room rate from the amount of the tax paid. These records shall be available during reasonable business hours for inspection or audit by the Tax Collector or the County Auditor-Controller.

B. All tax returns and information furnished by any operator pursuant to this Chapter shall be confidential and shall not be open to public inspection nor the specific contents thereof disclosed by any officer or employee except as necessary in the performance of official duty pursuant to this Chapter, or in the course of any proceeding, hearing or litigation involving the existence or amount of the tax liability of such operators, or with the written consent of the operator or an authorized representative. (Ord 5073, 2007; Ord. 3668, 1993; Ord. 3651, Section 7, 1992.)

5.40.150 REFUNDS

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 county under this chapter, it may be refunded as provided in subsection B and C of this section provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax collector within three years of the date of payment. The claim shall be on forms furnished by the tax collector.

B. 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 manner prescribed by the tax collector 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 transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the county by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient having paid the tax to the operator establishes to the satisfaction of the tax collector that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes a right to a refund by written records showing entitlement thereto. (Ord. 3668, 1993; Ord. 1404 Section 14, 1965.)

5.40.160 ACTIONS TO COLLECT

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 County. Any such tax collected by an operator which has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this Chapter shall be liable to an action brought in the name of the County of Monterey for the recovery of such amount.

B. Recording Certificate of Lien. If any amount required to be paid to the County under this Chapter is not paid when due, the Tax Collector may, within three (3) years after the amount is due file for recording in the Office of the Monterey County Recorder a certificate of lien specifying the amount of tax, penalties and interest due, and the name and address of the operator as it appears on the records of Tax Collector. The lien shall also specify that the Tax Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties and interest thereon, constitutes a lien upon all real property in the county owned by the operator or subsequently acquired by the operator before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from of filing of the certificate unless sooner released or otherwise discharged.

C. Warrant for Collection of Tax. At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection B of Section 5.40.160, the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same affect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff, marshal, or constable, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Tax Collector shall approve the fees for publication in the newspaper.

D. Seizure and Sale. At any time within three (3) years after recording a lien against any operator, if the lien is not discharged and released in full, the Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the operator subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure. (Ord. 5073, 2007; Ord. 3668, 1993; Ord. 1404, Section 15, 1965.)

5.40.170 VIOLATION-PENALTY.

A. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punishable therefore as provided in Section 1.20.040.B.1 of this Code.

B. Any operator or other person who fails or refuses to register as required in this Chapter, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set forth in Subsection A of this Section. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Chapter to be made is guilty of a misdemeanor and is punishable as set forth in Subsection A of this Section. (Ord. 5073, 2007; Ord. 3668, 1993; Ord. 1404, Section 16, 1965.)