

ORDINANCE NO. 660

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING SECTION 3.24.100, AND REPEALING AND
REPLACING SECTION 3.24.110, OF CHAPTER 3.24 OF THE
MORRO BAY MUNICIPAL CODE

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Chapter 3.24 (TOT Ordinance) of the Morro Bay Municipal Code (MBMC) provides for the collection of a transient occupancy tax (TOT) for the City of Morro Bay; and

WHEREAS, Section 3.24.100 (“Failure to collect and report tax – Determination of tax”) and Section 3.24.110 (“Appeal”) of the TOT Ordinance provide for a two-step appeal process of final TOT assessments issued by the City for failure to collect and/or make TOT payments to the City, whereby first the City Clerk hears appeals on such assessments, and then second the City Council hears appeals on such assessments; and

WHEREAS, the City Council desires: i) an independent and appointed professional hearing officer, rather than the City Clerk and the City Council, hear such appeals, submitted pursuant to requirements of the MBMC, on final TOT assessments by the City for failure to collect and/or make TOT payments to the City; ii) to clarify procedural steps for conducting such appeals; iii) to recover, for unsuccessful appeals of such TOT final assessments, the full, rather than discounted, current fiscal year cost recovery fee published in the City’s adopted fee schedule for appeals of non-land use City administrative decisions; and, iv) provide for procedural cleanup revisions including affirmation the tax administrator may utilize a designee; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. RECITALS. The City Council hereby finds that the recitals set forth above are all true and correct and are incorporated herein by this reference.

SECTION 2. CODE AMENDMENT.

- A. Sections 3.24.100 (“Failure to Collect or Report Tax”) of the Morro Bay Municipal Code is hereby amended to read as follows (new text in *bold italics*, removed text in ~~strikethrough~~):**

“3.24.100 Failure to Collect or Report Tax

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator (*or designee*) shall proceed in such manner as *she/he* may deem best to obtain facts and information on which to base *her/his* estimate of the tax due. As soon as the tax administrator (*or designee*) shall procure such facts and information as *she/he* is able to obtain upon which 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, *she/he* 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 administrator (*or designee*) shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at *her/his* last known place of address. ***If the operator fails to file, pursuant to Section 3.24.110 below, a timely appeal (in part or in whole) of that assessment, then the assessed tax, interest and/or penalties not appealed shall become final and conclusive and immediately due and payable.*** ~~The operator may within ten days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for the hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount specified therein should not be fixed for such tax, interest and penalties. 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 administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of the 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 3.24.110.~~

B. Section 3.24.110 of the Morro Bay Municipal Code is hereby repealed in its entirety and is replaced in its entirety with new Section 3.24.110 as follows:

"3.24.110 – Appeal

- A. An operator may within fifteen (15) days after the service or mailing of a final determination from the tax administrator (or designee), sent pursuant to Section 3.24.100 above, submit a notice of appeal to the tax administrator.
- B. An appeal must be submitted in writing to the tax administrator signed by the person making the appeal or their legal representative. The appeal must be accompanied by an appeal fee in accordance with below Section 3.24.110(C). Any appeal submitted to the City based upon this chapter shall be supported by evidence and contain the following:
 - 1. Name, address and telephone number of operator/appellant;
 - 2. Specify the decision(s), action(s), or particular part(s) of the assessment that are the subject of the appeal;
 - 3. Whether all or only specified tax, interest and/or penalties are being appealed;
 - 4. Include a true and correct copy of the notice issued by the tax administrator (or designee) for which the operator is appealing;
 - 5. State with specificity the reasons and grounds for making the appeal, including, but not limited to, both:
 - a. why the assessment (in whole or part) should be revoked, modified, or otherwise set aside; and
 - b. a statement of facts upon which the appeal is based in sufficient detail to enable the hearing officer to understand the nature of the controversy, basis of the appeal and relief requested;

6. All documents or other evidence pertinent to the appeal that the appellant requests the hearing officer consider at the hearing (documents and evidence not presented at the time of filing the appeal shall not be considered at the hearing except upon a showing of good cause);
 7. A statement that all of the matters alleged in the appeal are true, followed by the signature(s) of each appellant(s), and one official mailing address (if different than address in No. 1 above) for the appellant(s) to receive further notices from City relating to the appeal.
- C. The appeal fee for filing an appeal based upon this chapter is the full amount (i.e., full cost recovery) of the current fiscal year non-discounted fee provided for in the City's adopted fee schedule for appeals for non-land use administrative decisions. The appeal fee is refundable in its entirety if the appeal prevails in its entirety. The appeal fee is refundable in part, if the appeal prevails on some of its claims, on a pro rata basis calculated by the amount of the assessment reduction compared to the assessment amount appealed. The City Manager may provide an appeal fee hardship waiver, in whole or in part, for good cause.
 - D. Operators who file a timely written notice of appeal in compliance with this chapter will be entitled to an administrative hearing before an appointed independent hearing officer. The City Manager shall designate the hearing officer for the administrative hearing. The hearing officer shall not be a City of Morro Bay employee. Compensation for the hearing officer shall not be determined by the outcome of the appeal. The tax administrator shall forward all timely filed appeals to the hearing officer who shall schedule a hearing within ninety (90) days of the filing of the appeal. For good cause the hearing date may be reasonably postponed. The operator/appellant listed in the notice of appeal shall be notified in writing of the date, time and location of the hearing at least ten (10) days before the date of the hearing.
 - E. The appeal hearing is informal and formal rules of evidence and discovery do not apply. The hearing officer may consider all relevant evidence, and may exclude repetitive or irrelevant evidence. However, rules of privilege shall be applicable to the extent they are permitted and/or required by law. The hearing officer may accept and consider late evidence or documents not presented at the time of filing the appeal only upon a showing of good cause. The hearing officer shall determine on a case-by-case basis whether good cause exists for acceptance and consideration of any evidence or documents submitted late.
 - F. The appellant bears the burden of proof at the hearing to establish by a preponderance of the evidence that the appealed assessment of tax, interest and/or penalties as set forth in the final determination from the tax administrator (or designee) is not due and payable.
 - G. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording or video recording. If the appellant requests from the City that a court reporter, stenographer or videographer be used, appellant shall bear the cost of the same and shall deposit such fees prior to commencement of the administrative hearing.
 - H. If the appellant, or their legal representative, fails to appear at the appeal hearing, the hearing officer may cancel the appeal hearing and send notice thereof to the appellant by certified, first class mail to the address stated on the notice of appeal. A cancellation of a hearing due to a non-appearance of the appellant, or legal representative, shall constitute the appellant's waiver of the right to appeal and failure to exhaust administrative remedies.

- I. After consideration of all testimony and evidence submitted, the hearing officer shall issue a written decision to uphold or cancel the appealed assessment of tax, penalties and/or interest (in part or in whole) within twenty (20) days specifying the reasons for the decision. The written decision of the hearing officer is final and conclusive and subject to the time limits set forth in California Code of Civil Procedure §§ 1094.5 and 1094.6 for judicial review. A copy of the written decision shall be served by certified, first class mail on the appellant. Any tax, penalty and/or interest determined to be owed and payable by the hearing officer's decision is immediately due and payable."

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

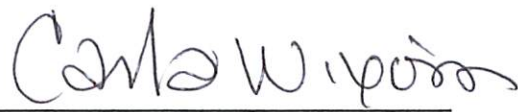
SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

SECTION 5. CERTIFICATION. The City Clerk shall certify as to the passage and adoption of this ordinance, and the City Clerk shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 12th day of September 2023, by motion of Council Member Ford and seconded by Council Member Barton.

PASSED AND ADOPTED on the 26th day of September, 2023 by the following vote:

AYES: Wixom, Barton, Edwards, Ford, Landrum
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None


CARLA WIXOM, Mayor

ATTEST:


DANA SWANSON, City Clerk

APPROVED AS TO FORM:


CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 660 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the 26th day of September 2023, and that it was so adopted by the following vote:

AYES: Wixom, Barton, Edwards, Ford, Landrum
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this 27th day of Sept, 2023



DANA SWANSON, City Clerk