

MARIPOSA COUNTY  
BOARD OF SUPERVISORS

AGENDA  
ACTION FORM

9-5-00  
DATE: 8/22/00 *Intro*  
AGENDA ITEM NO.: *6B CAS*

DEPARTMENT: County Counsel

BY: Jeffrey G. Green

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No X)

*8/22* ( ) Waive first reading and introduce Ordinance *9/5* ( ) Waive second reading and adopt Ordinance amending Chapter 3.36 of the Mariposa County Code.

Pursuant to direction from the Board of Supervisors, staff has proposed amending Chapter 3.36 relative to noticing requirements and penalties associated with the collection of transient occupancy taxes.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

At the Board meeting of April 11, 2000 the Board concurred with Supervisors Reilly and Pickard working with staff to bring back recommendations for amendments to the tax ordinance to clarify the appeal process and noticing requirements.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

<b>COSTS:</b> ( ) Not Applicable A. Budgeted current FY \$ _____ B. Total anticipated costs \$ _____ C. Required additional funding \$ _____ D. Internal transfers \$ _____  <b>SOURCE:</b> ( ) 4/5ths Vote Required A. Unanticipated revenues \$ _____ B. Reserve for contingencies \$ _____ C. Source description: _____ Balance in Reserve for Contingencies, if approved: \$ _____	<b>SPECIAL INSTRUCTIONS:</b> List the attachments and number the pages consecutively:  _____ _____ _____
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**CLERK'S USE ONLY:**  
Res. No.: \_\_\_\_\_  
Vote - Ayes: 4  
Absent: Reilly  
Approved ( ) Denied ( ) No Action Necessary  
Minute Order Attached ( )  
Ord. No. 953  
Noes: \_\_\_\_\_  
Abstained: \_\_\_\_\_

The foregoing instrument is a correct copy of the original on file in this office.  
Date: \_\_\_\_\_  
ATTEST: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California  
By: \_\_\_\_\_  
Deputy

**ADMINISTRATIVE OFFICER'S RECOMMENDATION:**  
This item on agenda as:  
 Recommended  
 Not Recommended  
 For Policy Determination  
 Submitted with Comment  
 Returned for Further Action

Comment: \_\_\_\_\_  
A.O. Initials: mm

**MARIPOSA COUNTY ORDINANCE NO. 953**

**AN ORDINANCE AMENDING CHAPTER 3.36 OF THE MARIPOSA COUNTY CODE  
ENTITLED TRANSIENT OCCUPANCY TAX**

The Board of Supervisors of the County of Mariposa ordains as follows:

**SECTION I:** Chapter 3.36 of the Mariposa County Code is hereby amended to read as follows:

**Chapter 3.36**

**TRANSIENT OCCUPANCY TAX**

**Sections:**

- 3.36.010 Title.
- 3.36.020 Definitions.
- 3.36.030 Imposition of tax.
- 3.36.040 Exemptions from tax. (Repealed)
- 3.36.050 Operator's duties.
- 3.36.060 Registration--Certificate.
- 3.36.070 Reporting rents and remitting tax.
- 3.36.080 Penalty--Original delinquency.
- 3.36.090 Penalty--Continued delinquency.
- 3.36.100 Penalty--Fraud.
- 3.36.110 Penalty--Merged with tax.
- 3.36.120 Failure to collect and report tax--Determination of tax by Tax Collector.
- 3.36.130 Appeal to board for grievance with decision of Tax Collector.
- 3.36.140 Records to be kept by operators.
- 3.36.150 Refund--Procedure.
- 3.36.160 Refund--Claim by operator.
- 3.36.170 Refund--Claim by transient.
- 3.36.180 Refund--Claimant to establish right by written records.
- 3.36.190 Actions to collect tax.
- 3.36.201 Violation--Penalty.
- 3.36.210 Failure to Obtain Certificate and Pay Taxes – Penalty.

**3.36.010 Title.**

This Chapter shall be known as the Uniform Transient Occupancy Tax Chapter of the County.

**3.36.020 Definitions.**

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

A. "Due date" or "date due" shall mean the date designated by the Tax Collector wherein the tax is due to be paid. Should the "due date" or the "date due" fall on a Saturday, Sunday, or holiday where either the post office or County offices are closed, the "due date" or "date due" shall be the first working day following the Saturday, Sunday or holiday.

B. "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, but is not limited to, any hotel, inn, bed and breakfast establishment or transient rental as defined in Section 17.108.180 of this Code, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer, at a fixed location, or other similar structure or portion thereof.

C. "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.

D. "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 his 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 his principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall, however, be considered to be in compliance by both.

E. "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.

F. "Remit" as used in this Chapter means that the taxes due under this Chapter shall be received by the Tax Collector on the due date or the postage containing the taxes must be postmarked no later than the due date of the tax."

G. "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, without any deduction therefrom whatsoever; provided, however, that "rent" shall not include lodging furnished in kind to any employee by an employer solely for the convenience of the employer.

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) consecutive 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. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the Ordinance codified in this Chapter may be considered. This definition of "Transient" shall also apply in cases where an individual or organization rents a premises for in excess of thirty (30) days as defined herein and that individual or organization allows use throughout the rental period by different individuals.

**3.36.030 Imposition of tax.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten percent (10%) of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator, or to the County. 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 be paid directly to the Tax Collector.

**3.36.040 Exemptions from tax. (Repealed)**

**3.36.050 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 in Sections 3.36.160 through 3.36.190.

**3.36.060 Registration--Certificate.**

Within thirty (30) days after the effective date of the Ordinance codified in this Chapter, or within thirty (30) days after commencing business, pursuant to other applicable provisions of County Code (Title 17), whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the Planning Department and obtain a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. A separate certificate shall be issued for each and every separate hotel or bed and breakfast and for each individual rental unit in a transient rental business. Existing certificates which have been issued to multiple facilities under one ownership shall be converted to separate certificates (per unit, as described above) within six (6) months of the effective date of this ordinance. The certificate shall, among other things, 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. The number of rooms (if a hotel operation) or bedrooms (if a transient rental or bed and breakfast) approved for rental. If in Wawona, the certificate shall list maximum occupancy by number of guests;

E. 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 Planning Department for the purpose of collecting for 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.

**3.36.070 Reporting rents and remitting tax.**

Each operator shall, 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, make a return to the Tax Collector, on forms provided by the Tax Collector, and which may be obtained from the Tax Collector's Office, of the total rents charged and received, and the amount of tax collected for transient occupancies. It shall be the responsibility of the operator to obtain the forms as described herein. If an operator has been issued more than one Transient Occupancy Registration Certificate, the operator shall report the tax collected and due on each unit that has a Transient Occupancy Registration Certificate. The operator may remit payment in one check for multiple units, but the accounting for tax collected and due shall be itemized for each separate certificated rental unit. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information 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 held in trust for the account of the County until payment thereof is made to the Tax Collector.

**3.36.080 Penalty--Original delinquency.**

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

**3.36.090 Penalty—Continued delinquency.**

When taxes remain unpaid at 5 p.m., or the close of business whichever is later, on the last day of the second succeeding calendar month after delinquency, operator shall pay an additional penalty of one and one half percent (1-1/2%) per month together with any actual costs of collection incurred by the County up to the time the delinquency is paid [§2922(c), (d)]. In the event taxes are not received by the Tax Collector on the due date, the Tax Collector shall, within thirty (30) days of the delinquency notify the operator, in writing, of the delinquency and the addition of penalties for failure to pay on the due date and additional penalties to be added.

This additional penalty attaches on the first day of every month thereafter until payment is made or a court judgment is entered, whichever occurs first.

**3.36.100 Penalty--Fraud.**

If the Tax Collector determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in Sections 3.36.080 and 3.36.090.

**3.36.110 Penalty--Merged with tax.**

Every penalty imposed, and such interest as accrues under the provisions of Sections 3.36.080 through 3.36.120, shall become a part of the tax herein required to be paid

**3.36.120 Failure to collect and report tax—Determination of tax by Tax Collector.**

If any operator fails or refuses to collect the tax, and to make, within the time provided in this Chapter (due date), any report and remittance of the tax or any portion thereof required by this Chapter, the Tax Collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Collector procures such facts and information as 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, 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 Collector 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 his last known place of business. Such operator may within ten (10) days after the serving or postmark of such notice 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 less than five (5) days written notice in the manner prescribed herein 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 such tax, interest, and penalties. 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 Tax Collector 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 such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 3.36.140.

**3.36.130 Appeal to Board for grievance with decision of Tax Collector.**

This Section shall apply only to Section 3.36.120 above. There is no appeal for late payment of taxes. Any operator aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within twenty (20) calendar days of the personal service or postmark of the determination of tax due by the Tax Collector. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors 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. As a condition precedent to the appeal rights contained herein the operator must pay the taxes determined by the Tax Collector. Should the operator prevail in the appeal the taxes determined not to be due shall be refunded.

**3.36.140      Records to be kept by operators.**

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 (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the County, which records the Tax Collector shall have the right to inspect at all reasonable times.

**3.36.150      Refund--Procedure.**

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 only upon a verified claim filed by the person who paid the tax, his guardian, executor or administrator, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Collector within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Collector.

**3.36.160      Refund--Claim by operator.**

An operator may claim a refund or take as credit against taxes to be 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 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.

**3.36.170      Refund--Claim by transient.**

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 Section 3.36.160, but only when the tax was paid by the transient directly to the Tax Collector, or when 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.

**3.36.180      Refund--Claimant to establish right by written records.**

No refund shall be paid under the provisions of Sections 3.36.160 through 3.36.190 unless the claimant establishes his right thereto by written records showing entitlement thereto and only upon a verified claim filed by the person who paid the tax, his guardian, executor or administrator.

**3.36.190      Actions to collect tax.**

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, in any court of competent jurisdiction within the County, or within the county of residence of such person, at the option of the Tax Collector, for the recovery of such amount. Said delinquencies shall be collected in the same manner as any unsecured tax collection procedure as provided by the California Revenue and Taxation Code.

**3.36.200 Violation--Penalty.**

A. Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Title is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) plus assessments on fines as prescribed by law, and other sections relating thereto, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment, or pursuant to Section 1.20.020 of the County Code, as that Section may be amended from time to time. A separate offense shall have been committed for each and every day during which a violation of any portion of this Title persists. This penalty is in addition to the penalties described in Section 3.36.080, 3.36.090 and 3.36.100.

B. Any operator or other person who fails or refuses to register as required herein, 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 aforesaid. 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 aforesaid.

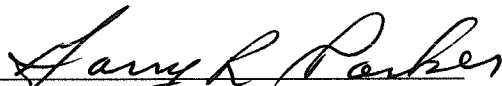
**3.36.210 Failure to Obtain Certificate and Pay Taxes--Penalty.**

Should an operator fail to obtain a Certificate as required in Section 3.36.060 above, and fail to pay taxes as due hereunder, the operator shall be subject to a penalty equal to twice the amount of taxes due as determined by the Tax Collector pursuant to the method as described in Section 3.36.120 above.

**SECTION II:** This Ordinance shall become effective thirty (30) days after final passage pursuant to the provisions of Government Code Section 25123.

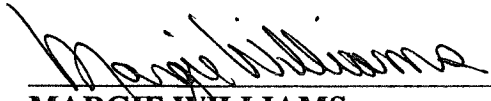
**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County this 5th day of September, 2000 by the following vote:

AYES: BALMAIN, STEWART, PARKER, PICKARD  
NOES: NONE  
ABSENT: REILLY  
ABSTAINED: NONE

  
**GARRY R. PARKER**, Chairman  
Board of Supervisors



**ATTEST:**

  
\_\_\_\_\_  
**MARGIE WILLIAMS**  
Clerk of the Board

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
**JEFFREY G. GREEN**  
County Counsel