

MARIPOSA COUNTY

Administration • 966-3222



ORDINANCE 2019-1140

MEETING: February 26, 2019
TO: The Board of Supervisors
FROM: Dallin Kimble, County Administrative Officer
RE: Amend Chapter 3.36 to Implement Measure M TOT Adjustment

RECOMMENDED ACTION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance Amending Chapter 3.36 of Title 3 of the Mariposa County Code, entitled "Transient Occupancy Tax", to reflect a Transient Occupancy Tax Rate of 12%, Pursuant to the November 2018 Election Results, and to Allow Booking Agents to Collect the Tax on Behalf of Hotels and Other Transient Occupancy Facilities.

Mariposa County residents voted to increase the Transient Occupancy Tax (TOT) rate from 10% to 12% in the November 2018 election. This ordinance formalizes that amendment in the Mariposa County Code. It also allows for booking agents, such as Airbnb, to collect and remit TOT on behalf of those using their services.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The people of Mariposa County passed Measure M in support of a 12% rate for transient occupancy tax in November 2018.

This ordinance was introduced at the February 12, 2019, meeting.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve. Staff will need further direction.

ATTACHMENTS:

2019 TOT Ordinance - Second Reading (DOCX)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Kevin Cann, District IV Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

MARIPOSA ORDINANCE NO. 1140

AN ORDINANCE AMENDING CHAPTER 3.36

(TRANSIENT OCCUPANCY TAX) OF THE MARIPOSA COUNTY CODE

WHEREAS, the people of Mariposa County voted in a fair and open election to support Measure M, an initiative amending the Transient Occupancy Tax rate in Chapter 3.36 of the Mariposa County Code; and

WHEREAS, an ordinance is needed to complete the process of changing the Mariposa County Code; and

WHEREAS, amendments are also desirable to facilitate tax collection from booking agents as well as individual lodging establishments.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political division of the State of California, does hereby ordain as follows:

SECTION I: Chapter 3.36 entitled "Transient Occupancy Tax", is hereby amended to read in its entirety as follows:

3.36.010 Title

This chapter shall be known as the uniform transient occupancy tax chapter of the County. (Ord. 245 Sec. 1, 1964).

3.36.020 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

1. "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.
2. "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, motel, and public or private club at a fixed location, or other similar structure or portion thereof. A hotel does not include a "bed and breakfast" facility, a "vacation rental" facility, a "guest ranch or dude ranch cabin", a "glamping unit", an "agricultural homestay" or other similar structure or portion thereof (collectively known as "other transient occupancy facility"), all of which are defined in Mariposa County Code, Zoning Section 17.148.010.
3. "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 or other transient occupancy facility, for dwelling, lodging, or sleeping purposes.
4. "Operator" means the person who is the proprietor of the hotel or other transient occupancy facility, 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 be considered to be compliance by both.

5. "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.
6. "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."
7. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel or other transient occupancy facility, valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, 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.
8. "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 or other transient occupancy facility, 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. This definition of "transient" shall also apply in cases where an individual or organization rents a premise for an excess of thirty (30) days as defined herein and that individual or organization allows use throughout the rental period by different individuals. (Ord. 1116 Sec. IV, 2016; Ord. 953, Sec. I, 2000; Ord. 245 Sec. 2, 1964).

3.36.030 Imposition Of Tax

For the privilege of occupancy in any hotel or other transient occupancy facility, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) 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 or other transient occupancy facility. If for any reason the tax due is not paid to the operator, the Tax Collector may require that such tax be paid directly to the Tax Collector. (Ord. 1116 Sec. IV, 2016; Measure B, effective 3/27/96; Repealed Ord. 892 Sec. I, 1995; Ord. 780 Sec. 1, 1990).

3.36.040 Exemptions From Tax (Reserved)

(Repealed Ord. 892 Sec. II, 1995; Ord. 780 Sec. 2, 1990; Ord. 469 Sec. B(30) and (31), 1977; Ord. 263 Sec. 2, 1965; Ord. 245 Sec. 4, 1964).

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, or other transient occupancy facility, 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. (Ord. 1116 Sec. IV, 2016; Ord. 245 Sec. 5, 1964).

3.36.060 Registration--Certificate

Prior to establishing a transient occupancy business, each operator of any hotel or other transient occupancy facility shall submit an application to 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 other transient occupancy facility, including each bed and breakfast and each individual rental unit in a vacation rental business. A separate certificate shall be issued for other transient occupancy facilities. 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 Ordinance No. 953.

The certificate shall, among other things, state the following:

1. The name of the operator;
2. The address of the hotel or other transient occupancy facility business;
3. The date upon which the certificate was issued;
4. The number of guest rooms (if a hotel or similar operation) or bedrooms (if a residential transient occupancy facility) approved for rental. If in Wawona, the certificate shall list maximum occupancy by number of guests, if the certificate was issued prior January 17, 2012. If a vacation rental certificate is approved on or after April 14, 2016, the certificate shall list maximum occupancy of guests as ten (10) or such lesser occupancy as desired by the owner or as required pursuant to County Code Section 17.108.180.D;
5. This “transient occupancy registration certificate” signifies that the person named on the face thereof has fulfilled the requirements of the uniform transient occupancy tax ordinance by registering with the planning department for the purpose of complying with zoning ordinance standards, 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 or other transient occupancy facility, 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. 1116 Sec. IV, 2016; Ord. 953 Sec. I, 2000; Ord. 245 Sec. 6, 1964).

3.36.070 Reporting Rents And Remitting Tax

On or before the last day of each calendar month, each operator shall 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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 7, 1964).

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. The board of supervisors shall have the authority to waive penalties imposed by section 3.36.080 and section 3.36.090

when the board of supervisors determines in a public meeting that good cause exists for waiving the penalties. (Ord. 977 Sec. I, 2002; Ord. 953 Sec. I, 2000; Ord. 245 Sec. 8(a), 1964).

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 on the amount of the original tax together with any actual costs of collection incurred by the County up to the time the delinquency is paid [§2922(c), (d)]. This additional penalty attaches on the first day of every month thereafter until payment is made or a court judgment is entered for the amount of unpaid taxes and penalties, whichever occurs first.

In the event taxes are not received by the tax collector on the due date, the tax collector shall notify the operator of the delinquency and the addition of applicable penalties in writing within thirty (30) days of the delinquency.

(Ord. 953 Sec. I, 2000; Ord. 245 Sec. 8(b), 1964).

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. (Ord. 245 Sec. 8(c), 1964).

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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 8(d), 1964).

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, 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 make application in writing to the tax collector for a hearing on the amount assessed within ten (10) calendar days after the serving or postmark of such notice. 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) calendar 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) calendar days unless an appeal is taken as provided in section 3.36.130. (Ord. 1116 Sec. IV, 2016; Ord. 953 Sec. I, 2000; Ord. 245 Sec. 8(e), 1964).

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 (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 9, 1964).

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 all records as may be necessary to determine the amount of such tax for a period of three (3) years. The tax collector shall have the right to inspect these records at all reasonable times. (Ord. 245 Sec. 10, 1964).

3.36.150 Refund--Procedure

Whenever the amount of any tax, interest, or penalty has been overpaid or 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. Such claim will be provided in writing within three (3) years of the date of payment, stating under penalty of perjury the specific grounds upon which the claim is founded. The claim shall be on forms furnished by the tax collector. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 11, 1964).

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 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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 12(a), 1964).

3.36.170 Refund--Claim By Transient

A transient may obtain a refund of taxes overpaid 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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 12(b), 1964).

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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 12(c), 1964).

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. Said delinquencies shall be collected in the same manner as any unsecured tax collection procedure as provided by the California Revenue and Taxation Code. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 12(d), 1964).

3.36.200 Violation--Penalty

1. 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.
2. 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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 13, 1964).

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. (Ord. 953 Sec. I, 2000; Ord. 245 Sec. 14, 1964).

SECTION II: This Ordinance shall become effective on April 1, 2019, which is more than thirty (30) days from the date of passage, pursuant to Government Code 25123.


PASSED AND ADOPTED this 26th day of February, 2019, by the Board of Supervisors of Mariposa County by the following vote:

AYES:	SMALLCOMBE, JONES, LONG, CANN, MENETREY
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE


 Miles Menetrey, Board Chair

ATTEST:

APPROVED AS TO FORM:


 René LaRoche, Clerk of the Board


 Steven W. Dahlem, County Counsel