

**ORDINANCE NO. 1332-16 (CM)**

**A CODIFIED ORDINANCE BY THE VOTERS OF THE CITY OF WATSONVILLE AMENDING ARTICLE 3 (UNIFORM TRANSIENT OCCUPANCY TAX LAW) TO CHAPTER 6 (TAXATION) OF TITLE 3 (FINANCE) OF THE WATSONVILLE MUNICIPAL CODE AMENDING THE CITY’S UNIFORM TRANSIENT OCCUPANCY TAX (TOT) TO BE DONE SOLELY WITH VOTER APPROVAL**

**Rescinds Ordinance No.’s 84-64 C-M, 126-66 C-M, 710-86 (CM), 785-88 (CM), and 896-92 (CM)**

**ELECTION ON NOVEMBER 8, 2016**

**EFFECTIVE DATE:**

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**THE PEOPLE OF THE CITY OF WATSONVILLE, CALIFORNIA, DO HEREBY  
ORDAIN AS FOLLOWS:**

**SECTION 1. ENACTMENT.**

Article 3 (Uniform Transient Occupancy Tax) of Chapter 6 (Taxation) of Title 3 (Finance) of the Watsonville Municipal Code is hereby amended by removing Article 3 (Uniform Transient Occupancy Tax) in its entirety and replacing with a new Article 3 (Uniform Transient Occupancy Tax Law) to read in words and figures as follows:

**Article 3. Uniform Transient Occupancy Tax Law**

**Sec. 3-6.301 Title.**

This article shall be known as the “Uniform Transient Occupancy Tax Law” of the City.

**Sec. 3-6.302 Definitions.**

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

(a) “Person” shall mean any individual, firm, partnership, limited liability company, 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.

(b) “Transient Occupancy Facility” shall mean any temporary or permanent structure, motor home, mobile home, modular building or out building or any portion thereof, which is occupied or intended or designed for occupancy, by transients for dwelling, lodging, or sleeping purposes and shall include any hotel, inn, tourist home or house, home, residence, outbuilding, granny unit, accessory unit, duplex, triplex, fourplex, apartment, motel studio hotel, bachelor hotel, lodging house, rooming house,

dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or any portion thereof.

(c) “Occupancy” shall mean the use or possession, or the right to the use or possession, of any room, or portion thereof, in any transient occupancy facility for dwelling, lodging, or sleeping purposes for any time period.

(d) “Transient” shall mean 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 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 long period of occupancy. In determining whether a person is transient, uninterrupted periods of time extending both before and after the effective date of this article may be considered.

(e) “Rent” shall mean the consideration charged, whether received, for the occupancy of space in a 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.

(f) “Operator” shall mean the person who is the proprietor of the transient occupancy facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, trustee, receiver, or any other capacity including such arrangements as “Airbnb” or similar. 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 article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent, however, shall be considered to be compliance by both.

(g) "Finance Director" shall mean the City Finance Director.

(h) "Certificate" shall mean the transient occupancy registration certificate as described in WMC 3-6.306.

### **Sec. 3-6.303 Tax imposed.**

For the privilege of occupancy in any transient occupancy facility, each transient shall be subject to and shall pay a tax in the amount of eleven (11%) percent of the rent charged by the operator. Such tax shall constitute a debt owed by the transient to the City which debt shall be extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the transient occupancy facility 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 transient occupancy facility. If for any reason the tax due is not paid to the operator of the transient occupancy facility, the City Finance Director may require that such tax shall be paid directly to the City Finance Director.

### **Sec. 3-6.304 Exemptions.**

No tax shall be imposed upon:

(a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax provided for in this article; or

(b) Any officer or employee of a foreign government who is exempt by reason of an express provision of Federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected and under penalty of perjury upon a form prescribed by the City Finance Director

**Sec. 3-6.305 Operator’s duties.**

Each operator shall collect the tax imposed by the provisions of this article 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 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 this article.

**Sec. 3-6.306 Registration certificate required.**

Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, each operator of any transient occupancy facility renting occupancy to transients shall register said transient occupancy facility with the City Finance Director and obtain a “transient occupancy registration certificate” to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the transient occupancy facility;
- (c) The date upon which the certificate was issued;
- (d) The certificate number; and
- (d) The following statement:

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 City Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Finance Director. This Certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, nor to operate a 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 City. This Certificate does not constitute a permit.

**Sec. 3-6.307 Registration.**

On or before August 13, 1964, or within thirty (30) days after commencing business, whichever is later, each operator of any transient occupancy facility renting an occupancy to transients shall register such transient occupancy facility with the City Finance Director and obtain a "Transient Occupancy Registration Certificate" which shall at all times be posted in a conspicuous place on the premises. Such certificate shall, among other things, set forth the following information:

- (a) The name of the operator;
- (b) The address of the transient occupancy facility;
- (c) The date upon which the certificate was issued; and
- (d) A statement as follows: "This Transient Occupancy Registration Certificate

signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Law by registering with the City Finance Director for the purpose of collecting from transients the Transient Occupancy Tax and remitting

such tax to the City Finance Director. This certificate shall not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a 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 City. This certificate shall not constitute a permit”.

**Sec. 3-6.308 Certificate number required on all advertisements.**

The operator must include the certificate number in all forms of advertisement.

**Sec. 3-6.309 Reporting and remitting.**

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 City Finance Director, make a return to the City Finance Director, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the City Finance Director. The City Finance Director 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 shall be due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to the provisions of this article shall be held in trust for the account of the City until payment thereof is made to the City Finance Director.

**Sec. 3-6.310 Failure to file—Penalties.**

Any operator who holds a certificate but does not rent the transient occupancy facility during any month is still required under WMC 3-6.308 to file a return on or before

the last day of the month following the close of each calendar month. Any operator who fails to file the return as required shall pay a non-filing penalty of \$25.00. The penalty is waived for the first offense in a 12-month period, but shall apply to each subsequent offense.

**Sec. 3-6.311 Penalties and interest.**

(a) Original delinquency. Any operator who shall fail to remit any tax imposed by the provisions of this article within the time required shall pay a penalty in the amount of ten (10%) percent of the tax in addition to the amount of the tax.

(b) Continued delinquency. Any operator who shall fail 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 in the amount of ten (10%) percent of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

(c) Fraud. If the City Finance Director shall determine that the non-payment of any remittance due pursuant to the provisions of this article is due to fraud, a penalty in the amount of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) Interest. In addition to the penalties imposed, any operator who shall fail to remit any tax imposed by the provisions of this article shall pay interest at the rate of one-half (1/2) of one 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 until paid.

(e) Penalties merged with tax. Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this article.

**Sec. 3-6.312 Failure to collect and report tax: Determination of tax by City Finance Director.**

If any operator shall fail or refuse to collect such tax and to make, within the time provided in this article, any report and remittance of such tax, or any portion thereof, required by the provisions of this article, the City Finance Director shall proceed in such manner as he or she may deem best to obtain the facts and information on which to estimate the tax due. As soon as the City Finance Director shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by the provisions of this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the City Finance Director shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this article. If such determination is made, the City Finance Director shall give notice of the amount so assessed by serving the notice personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten (10) days after the service or mailing of such notice, apply in writing to the City Finance Director for a hearing on the amount assessed. If an application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the City Finance Director shall become final and conclusive and immediately due and payable. If such an application is made, the City Finance Director shall give not less than five (5) days' written notice in the manner prescribed in this section to the operator to show cause at a time and place fixed in such 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 City Finance Director shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section 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 filed as provided in Section 3-6.313 of this article.

**Sec. 3-6.313 Appeals.**

Any operator aggrieved by any decision of the City Finance Director with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days after the service or mailing of the determination of the tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this article for the service of the notice of hearing. Any amount found to be due shall immediately become due and payable upon the service of the notice.

**Sec. 3-6.314 Records.**

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by the provisions of this article 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 City, which records the City Finance Director shall have the right to inspect at all reasonable times.

**Sec. 3-6.315 Refunds.**

(a) Whenever the amount of any such tax, interest, or penalty has been overpaid, or paid more than once, or erroneously or illegally collected or received by the City, such amount may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the City Finance Director within three (3) years after the date of payment. The claim shall be on forms furnished by the City Finance Director.

(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 a manner prescribed by the City Finance Director that the person from whom the tax has been collected was not a transient; provided, however, 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, 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) of this section but only when the tax was paid by the transient directly to the City Finance Director, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the City Finance Director that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid pursuant to the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

**Sec. 3-6.316 Actions to collect.**

Any tax required to be paid by any transient pursuant to the provisions of this article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City pursuant to the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

**Sec. 3-6.317 Violation—Revocation.**

The City Finance Director may revoke the certificate from any operator or other person who is in violation of the provisions of this article. To revoke the certificate, the City Finance Director shall serve the operator with a notice of revocation of the certificate, with a copy to the Director of Community Development, Police Chief and City Attorney.

**SECTION 2. PUBLICATION.**

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

**SECTION 3. SEVERABILITY.**

If any provision of these Sections or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provision or applications of the Article which can be given effect without the invalid provision or application, and to this end the provision of these Sections are severable.

**SECTION 4. EFFECTIVE DATE.**

This ordinance shall be in force and take effect ten (10) days after the City Council declares the vote of the November 8, 2016, Presidential General Election pursuant to California Election Code Section 9217 and shall become operative and be imposed on January 1, 2017, and shall not apply prior to said date.

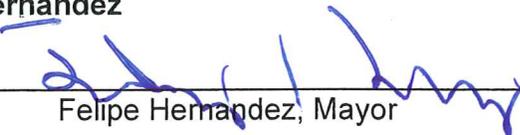
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The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Watsonville, held on the 14<sup>th</sup> day of June, 2016, by Member Bilicich, who moved its introduction and adoption, which motion being duly seconded by Member Coffman-Gomez, was upon roll call carried and ordinance adopted, ordered printed and published by the following vote:

AYES: COUNCIL MEMBERS: **Bilicich, Cervantez Alejo, Coffman-Gomez, Dutra, Garcia, Hurst,**

NOES: COUNCIL MEMBERS: **None**

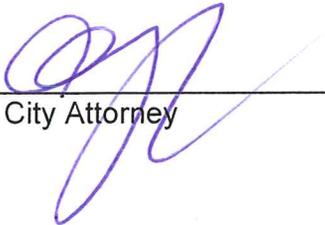
ABSENT: COUNCIL MEMBERS: **Hernandez**

  
\_\_\_\_\_  
Felipe Hernandez, Mayor

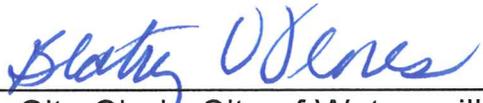
ATTEST:

  
\_\_\_\_\_  
Gladys O Jones  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Ordinance No. 1332-16 (CM) of the Council of the City of Watsonville was passed and adopted by the Council thereof on the 14<sup>th</sup> day of June, 2016, and a summary was published according to law to-wit: by publication for one day in the Register Pájaronian issue June 25, 2016.

  
\_\_\_\_\_  
City Clerk, City of Watsonville

Dated: June 30, 2016