

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 5.32 OF THE MONTEREY COUNTY CODE RELATING TO
THE DOCUMENTARY TRANSFER TAX**

County Counsel Summary

This ordinance amends Chapter 5.32 of the Monterey County Code as it relates to the application of the Documentary Transfer Tax to the transfer of interests in real property in the County of Monterey. The amendment reflects current state and federal law definitions of "transfer" and "realty sold," updates the citations to existing law, and contains other clean-up clarifications of terminology and applicability.

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

SECTION 1. PURPOSE. The "Real Property Transfer Tax Ordinance" that was originally effective January 1, 1968, is codified at Chapter 5.32 of the Monterey County Code. The originally-enacted provisions must be amended to reflect the current expanded legal definitions of "transfer" and "realty sold" contained in California Constitution Article XIII A and other law. This change is necessary in order to achieve equitable treatment of all changes of ownership of real property.

SECTION 2. Chapter 5.32 of the Monterey County Code is amended to read as follows:

Chapter 5.32

Documentary Transfer Tax

Sections:

5.32.010 - Title—Statutory Authority.

5.32.020 - Imposed.

5.32.030 - Liability for payment.

5.32.040 - Exemption—Instrument securing debt.

5.32.050 - Exemption—Title acquired by government entity.

5.32.060 - Exemption—Conveyances effecting certain plans of reorganization.

5.32.070 — (Reserved) Exemption—Conveyances effecting certain orders of Securities and Exchange Commission.

5.32.080 - Exemption—Certain transfers of realty held by partnership.

5.32.090 - Credit for city-imposed tax.

5.32.100 — (Reserved) Repurchase of unused stamps.

5.32.110 - Administration.

5.32.120 - Recordation procedure.

5.32.130 - Refunds.

5.32.140 — (Reserved) Interpretation of provisions.

5.32.150 - Records may be required to be furnished.

5.32.160 — (Reserved) Operative date.

5.32.170 - Violation—Exception.

5.32.180 – Exemptions – Instruments in lieu of foreclosure.

5.32.190 - Exemptions – Allocation of assets between spouses.

5.32.200 – Exemptions – Certain deeds with agreement for purchasers to reconvey to government entity.

5.32.210 – Exemptions – Certain conveyances involving nonprofit corporations.

5.32.220 – Claims of exemption.

5.32.230 – Tax as a debt.

5.32.240 – Manner of giving notice.

5.32.010 - Title—Statutory Authority.

The ordinance codified in this Chapter shall be known as the "Documentary Real Property Transfer Tax Ordinance of the County of Monterey." It is adopted pursuant to California Revenue and Taxation Code sections 60, et seq., including but not limited to subsections (c) and (d) of section 64, and Part 6.7 (commencing with Section section 11901, et seq.) of Division 2 of the Revenue and Taxation Code. (Ord. 1573 § 1, 1967)

5.32.020 - Imposed.

There is imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the County of Monterey are granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his or her or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds one hundred dollars (\$100.00), a tax at the rate of fifty-five cents (\$0.55) for each five hundred dollars (\$500.00) or fractional part thereof. For purposes of this section, “realty sold” is defined as a change of ownership as set forth in California Revenue and Taxation Code section 60, et seq., including but not limited to subsections (c) and (d) of section 64. (Ord. 1573 § 2, 1967)

5.32.030 - Liability for payment.

The tax imposed by Section 5.36.020 shall be paid by any person who makes, signs, or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 1573 § 3, 1967)

5.32.040 - Exemption—Instrument securing debt.

The tax imposed pursuant to this Chapter shall not apply to any instrument in writing given to secure a debt. (Ord. 1573 § 4, 1967)

5.32.050 - Exemption—Title acquired by government entity.

Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this Chapter when the exempt agency is acquiring title. (Ord. 1792 § 1, 1971; Ord. 1573 § 5, 1967)

5.32.060 - Exemption—Conveyances effecting certain plans of reorganization.

A. The tax imposed pursuant to this Chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 101205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 101506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in ~~identify~~ identity, form or place of organization is effected.

B. Subsections A1 through A4, inclusive, of this Section shall only apply if the making, deliver ~~of~~ or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change. (Ord. 1573 § 6, 1967)

~~5.32.070 — (Reserved) Exemption—Conveyances effecting certain orders of Securities and Exchange Commission.~~

~~The tax imposed pursuant to this Chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:~~

~~A. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;~~

~~B. Such order specifies the property which is ordered to be conveyed;~~

~~C. Such conveyance is made in obedience to such order.~~

~~(Ord. 1573 § 7, 1967)~~

5.32.080 - Exemption—Certain transfers of realty held by partnership.

A. In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no tax shall be imposed pursuant to this Chapter by reason of any transfer of an interest in the partnership or other partnership treated entity or otherwise, if both of the following occur:

1. Such partnership (or other partnership treated entity) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 198654; and
2. Such continuing partnership or other partnership treated entity continues to hold the realty concerned.

B. If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 198654, for purposes of this Chapter, such partnership or other partnership treated entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership or other partnership treated entity at the time of such termination.

C. Not more than one tax shall be imposed pursuant to this Chapter by reason of a termination described in Subsection B of this Section, and any transfer pursuant thereto, with respect to the realty held by such partnership or other partnership treated entity at the time of such termination.

D. No tax shall be imposed pursuant to this Section by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the direct or indirect method of holding title to the realty and in which proportional ownership interest in realty, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, remains the same immediately after the transfer.
(Ord. 1573 § 8, 1967)

5.32.090 - Credit for city-imposed tax.

If the legislative body of any city in the County imposes a tax pursuant to ~~Part 6.7 of Division 2 of the Revenue and Taxation Code~~ Section 11911(b) equal to one-half the amount specified in Section 5.36.020 herein, a credit shall be granted against the taxes due under this Chapter in the amount of the city's tax collected. (Ord. 1573 § 9, 1967)

5.32.100 -- (Reserved) Repurchase of unused stamps.

~~The Recorder shall repurchase any unused documentary tax stamps sold by him or her prior to July 1, 1968. The Recorder shall accept in payment of the tax any such stamps affixed to a document offered for recordation and shall cancel the stamps so affixed.~~ (Ord. 1608 § 2, 1968; Ord. 1573 § 10, 1967)

5.32.110 - Administration.

A. The County Recorder shall administer this Chapter, and shall also administer any ordinance adopted by any city in the County pursuant to ~~Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code~~ Section 11901, et seq., imposing a tax for which a credit is allowed by this Chapter.

B. On or before the fifteenth day of the month, the Recorder shall report to the County Auditor the amounts of taxes collected during the preceding month pursuant to this Chapter and each such city ordinance.

C. The Auditor shall allocate and distribute monthly said taxes as follows:

1. All moneys which relate to transfers of real property located in the unincorporated territory of the County shall be allocated to the County.

2. All moneys which relate to transfers of real property located in a city in the County which has imposed a tax pursuant to ~~Part 6.7 Revenue and Taxation Code Section 11911(b),~~ referred to in Subsection A of this Section, shall be collected and allocated one-half to such city and one-half to the County.

3. All moneys which relate to transfers of real property located in a city in the County which imposes a tax on transfers of real property not in conformity with Revenue and Taxation Code Section 11911(b)~~Part 6.7, referred to in Subsection A of this Section,~~ shall be collected and allocated entirely to the County.

4. All moneys which relate to transfers of real property in a city in the County which does not impose a tax on transfers of real property shall be collected and allocated entirely to the County. (Ord. 1608 § 3, 1968; Ord. 1573 § 11, 1967)

5.32.120 - Recordation procedure.

A. Every document subject to tax under this Chapter which is submitted for recordation shall show on the face of the document the amount of tax due and the incorporated or unincorporated location of the lands, tenements or other realty described in the document.

B. If the party submitting the document for recordation so requests, the amount of tax due shall be shown on a separate paper which shall be affixed to the document by the Recorder after the permanent record is made and before the original is returned as specified in Section 27321 of the Government Code.

C. The Recorder shall not record any deed, instrument or writing subject to the tax imposed by this Chapter unless the tax is paid at the time of recording. A declaration of the amount of tax due, signed by the party determining the tax or his or her agent, shall appear on the face of the document or on a separate paper in compliance with Subsection B of this Section, and the Recorder may rely on such declaration; provided he or she has no reason to believe that the full amount of the tax due has not been paid. The declaration shall include a statement that the consideration or value on which the tax due was computed was, or that it was not, exclusive of the value of a lien or encumbrance remaining on the interest or property conveyed at the time of sale. (Ord. 1608 § 4, 1968; Ord. 1573 § 12, 1967)

5.32.130 - Refunds.

Claims for refunds of taxes imposed pursuant to this Chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code Section 5096, et seq. (Ord. 1608 § 5 (part), 1968; Ord. 1573 § 13, 1967)

5.32.140 — (Reserved) Interpretation of provisions.

~~In the administration of this Chapter, the Recorder shall interpret its provisions consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the Tax on Conveyances and identified as Section 47.4361-1, 47.4361-2 and 47-4362-1 of Part 47 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967, except that for the purposes of this Chapter, the determination of what constitutes "realty" shall be determined by the definition or scope of that term under State law. (Ord. 1608 § 5 (part), 1968; Ord. 1573 § 14, 1967)~~

5.32.150 - Records may be required to be furnished.

Whenever the County Recorder has reason to believe that the full amount of tax due under this Chapter has not been paid, he or she may by notice served upon any person liable therefor, require him or her to furnish a true copy of his or her records relevant to the amount of the consideration or value of the interest or property conveyed. (Ord. 1608 § 5 (part), 1968; Ord. 1573 § 15, 1967)

5.32.160 — (Reserved) Operative date.

~~This Chapter became operative at one minute after twelve a.m., on January 1, 1968. (Ord. 1608 § 5 (part), 1968; Ord. 1573 § 17, 1967)~~

5.32.170 - Violation—Exception.

A. Any person or persons who makes, signs, issues or accepts or causes to be made, signed, issued or accepted, and who submits or causes to be submitted for recordation, any deed, instrument or writing subject to the tax imposed by this Chapter, and makes any material misrepresentation of fact for the purpose of avoiding all or any part of the tax imposed by this Chapter, is guilty of a misdemeanor.

B. No person or persons shall be liable, either civilly or criminally, for any unintentional error made in designating the location of the lands, tenements or other realty described in a document subject to the tax imposed by this Chapter. (Ord. 1608 § 5 (part), 1968; Ord. 1573 § 16, 1967)

5.32.180 – Exemptions – Instruments in lieu of foreclosure.

A. The tax imposed pursuant to this Chapter shall not apply to any deed, instrument or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustee as a result of, or in lieu of, foreclosure; provided, that the tax shall apply to the extent that the consideration exceeds the unpaid debt, including the accrued interest and cost of foreclosure.

B. Consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on the deed, instrument or writing, or stated in an affidavit or declaration under penalty of perjury.

5.32.190 – Exemptions – Allocation of assets between spouses.

A. The tax imposed pursuant to this Chapter shall not apply to any deed, instrument or writing which transfers, divides or allocates community, quasi-community or quasi-marital property assets between spouses for purposes of effecting a division of the same, which is required by a judgment decreeing a dissolution or legal separation, by a judgment of nullity or by any other judgment or order rendered pursuant to the California Family Code, or by written agreement between the spouses, executed in contemplation of such judgment or order, whether or not it is incorporated in the judgment or order.

B. The deed, instrument or writing shall include a written recital, signed by either spouse, stating that it is entitled to the exemption.

5.32.200 – Exemptions – Certain deeds with agreement for purchaser to reconvey to government entity.

The tax imposed pursuant to this Chapter shall not apply with respect to any deed, instrument or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency.

5.32.210 – Exemptions – Certain conveyances involving nonprofit corporations.

The tax imposed pursuant to this Chapter shall not apply with respect to any deed, instrument or other writing by which the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty, the acquisition, construction or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a government unit, within the meaning of Section 1.103-1(b) of Title 26 of the Code of Federal Regulations.

5.32.220 – Claims of Exemption.

Except as otherwise provided by law, every person who records a deed, instrument or writing which he or she claims is exempt from the tax imposed pursuant to this Chapter shall declare in writing, under penalty of perjury, in the manner and form prescribed by the Recorder, the reason why it is exempt under the law.

5.32.230 – Tax as a debt.

The amount of any tax imposed by this Chapter shall be deemed a debt owed to the County. Any person owing the tax shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the County to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax imposed by this Chapter or the failure to comply with any of the provisions hereof.

5.32.240 – Manner of giving notice.

A. Any notice required to be given hereunder by the Recorder or the Board of Supervisors to any person shall be sufficiently given or served if it is personally served upon such person or if it is deposited, with prepaid postage, in a post office letter box addressed to the person at the address for such person given on a document or a refund claim form, or if no such address is available, to the person at the official address maintained by the Treasurer-Tax Collector for mailing of tax bills levied against the real property that was transferred without full payment of tax or, if no such address is available, to the person at the address of said real property. Notice shall be deemed effective when it is personally served or deposited in the mail.

B. The failure of the owner or any other person to receive any notice required by this Chapter to be given shall not affect the validity of any proceedings taken pursuant thereto.

SECTION 3. The amendment to Chapter 5.32 herein does not create new law, but only reflects existing state and federal law. Notwithstanding this restatement of existing law, the charges generated pursuant to this Chapter continue to reflect no more than the reasonable and actual regulatory costs to the County for performing the investigation and audit services and the administrative enforcement and adjudication thereof on behalf of and arising from the real property transaction of the payor. (Cal. Const. Art. XIII C, sec. 1(e)(1),(2) and (3).)

SECTION 4. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Monterey hereby declares that it would have passed and adopted this ordinance and each section, subsection, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words be declared invalid.

SECTION 5. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Board of Supervisors

A T T E S T

Gail T. Borkowski
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel