

**CITY COUNCIL
CITY OF CARMEL-BY-THE-SEA**

ORDINANCE 2012-5

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARMEL-BY-THE-SEA ESTABLISHING THE CARMEL HOSPITALITY
IMPROVEMENT DISTRICT**

WHEREAS, on July 3, 2012, the Carmel City Council adopted Resolution No. 2012-48 entitled, "A Resolution of the City Council of the City of Carmel-by-the-Sea declaring its Intention to Establish the Carmel Hospitality Improvement District";

WHEREAS, Resolution No. 2012-48 was published and copies thereof were duly mailed and posted as required by the applicable provisions of the California Government and Streets and Highways Codes; and

WHEREAS, pursuant to Resolution No. 2012-48, a public meeting concerning the formation of said district was held before the City Council on July 3, 2012; and

WHEREAS, all written and oral protests were duly heard, and testimony concerning the proposed district was received and considered; and

WHEREAS, the City Council determined that there was no majority protest within the meaning of Streets and Highways Code Section 36525, as written protests were not received from owners businesses in the proposed district which would pay fifty (50%) or more of the assessments proposed to be levied; and

WHEREAS, protests are weighted based on the assessment proposed to be levied on each lodging operation. For purposes of determining the applicable majority protest figure for the initial formation of the district, the proposed assessment to be levied was calculated based on the assessment rate multiplied by the most recent available data for the lodging operations gross lodging revenues as reported to the City during fiscal year 2010-11.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA does hereby resolve to:

Establish the Carmel Hospitality Improvement District as set forth in Exhibit "A".

Severability. If any part of this ordinance, even as small as a word or phrase, is found to be unenforceable such finding shall not affect the enforceability of any other part.

Effective Date. This ordinance shall become effective September 7, 2012

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this seventh day of August 2012 by the following roll call vote:

AYES:	COUNCIL MEMBERS:	BEACH; HAZDOVAC; HILLYARD; TALMAGE & BURNETT
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

SIGNED,


JASON BURNETT, MAYOR

ATTEST:


Heidi Burch, City Clerk

EXHIBIT "A"

CMC _____ Establishing the Carmel Hospitality Improvement District

Section 1. Pursuant to Streets and Highways Code Sections 36500 et seq. and any subsequent amendments, the City of Carmel-by-the-Sea Hospitality Improvement District is hereby established in the City of Carmel-by-the-Sea and all lodging operations in the HID established by this ordinance shall be subject to assessment as set forth herein.

Section 2. The City Council of the City of Carmel-by-the-Sea finds that lodging operations within the HID will be benefited by the activities funded by assessments to be levied.

Section 3. Chapter ____ (Carmel Hospitality Improvement District) is hereby added to Title _____ of the Carmel-by-the-Sea Municipal Code to read as follows:

Title

This chapter shall be known as the "City of Carmel-by-the-Sea Hospitality Improvement District Law."

- A. "City Council" shall mean the City Council of the City of Carmel-by-the-Sea
- B. "Advisory Board" shall mean the Carmel Hospitality Improvement District board established by the Resolution of Intention to oversee the HID.
- C. District or "HID" shall mean the Carmel-by-the-Sea Hospitality Improvement District created by this chapter and as delineated in Section ____.
- D. "Gross lodging revenue" shall mean the rent charged by the operator per occupied room per night for all occupancies, plus any other non-optional ancillary charges imposed on occupants of occupied rooms including but not limited to resort fees, housekeeping gratuities and utility surcharges. Notwithstanding the foregoing sentence, occupancies by federal government employees on government business for 30 consecutive days or less shall not be included in gross lodging revenues. Assessments levied pursuant to the District shall not be included in gross room rental revenue for the purpose of determining the amount of the transient occupancy tax under Chapter Three of the Carmel-by-the-Sea Municipal Code.
- E. "Lodging operation" shall mean a lodging unit, as defined in Section 17.70.020 of the Carmel-by-the-Sea Municipal Code, which pays transient occupancy tax to the City.
- F. "Law" shall mean the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., as amended.
- G. "Operator" shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs its 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 and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall however be considered to be compliance by both.

Authorized Uses.

The purpose of forming the HID as a business improvement area under the Law is to provide revenue to defray the costs of services, activities and programs promoting tourism that will benefit the operators of lodging operations in the HID through the promotion of lodging operations and the City of Carmel-by-the-Sea for small conferences and groups. It is the intent of this chapter to provide a supplemental source of funding for the promotion of group business in the HID and it is not intended to supplant any other existing sources of revenue that may be used by the City of Carmel-by-the-Sea for the promotion of tourism. The specific services, activities and programs to be provided by the HID are as follows:

- A. The general promotion of tourism with the HID shall include costs of programs and physical improvements as specified in the business plan to be adopted annually;
- B. The marketing of conference, group, and vacation business that benefits local tourism and the local lodging industry in the district;
- C. The marketing of the HID to the travel industry in order to benefit local tourism and the local lodging industry in the district.

Boundaries

The boundaries of the HID shall be the boundaries of the City of Carmel-by-the-Sea.

Levy of assessment and exemptions.

- A. The HID shall include all lodging operations located within the HID boundaries. Beginning on the effective date of the ordinance adopting the HID, the assessment shall be levied against all lodging operations, existing and future, within the boundaries of the business improvement district with the city of Carmel-by-the-Sea. The assessment shall be collected bimonthly, based on the gross lodging revenues for the previous two months. New lodging operations within the boundaries shall not be exempt from the levy of assessment.

- B. Each operator shall, on or before the last day of the month following the close of each calendar month, or at the close of any longer period which may be established by the City Administrator, make a return to the City Administrator, on forms provided by him/her, of the total gross lodging revenues charged and received for occupancies in the lodging operation. The return shall be made whether or not gross lodging revenues have been charged during the month. At the time the return is filed, the full amount of the assessment shall be remitted to the City Administrator. The City Administrator may establish shorter reporting periods for a lodging operation if he/she deems it necessary in order to insure collection of the assessment and he/she may require further information in the return.
- C. If any operator shall fail or refuse to make, within the time provided in this chapter, any report and remittance of said assessment or any portion thereof required by this chapter, the City Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the assessments due. As soon as the City Administrator shall procure such facts and information as he/she is able to obtain upon which to base the assessment imposed by this chapter and payable by any operator who has failed or refused to make such report and remittance he/she shall proceed to determine and assess against such operator the assessment, interest, and penalties provided for by this chapter. In case such determination is made, the City Administrator shall give a notice of the amount so assessed by serving notice personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his/her last known place of address.
- D. Such operator may within ten days after the serving or mailing of such notice make application in writing to the City Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the assessment, interest and penalties, if any, determined by the City Administrator shall become final and conclusive and immediately due and payable. If such application is made, the City 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 said amount specified therein should not be fixed for such assessment, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified assessment, interest, and penalties should not be so fixed. After such hearing the City Administrator shall determine the proper assessment to be remitted and shall thereafter give written notice to the person in the manner prescribed 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 assessment, interest and penalties.

- E. It shall be the duty of every operator liable for the collection and payment to the city of an assessment levied by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the city, which records the City Administrator shall have the right to inspect at all reasonable times. To conduct such inspections, the City Administrator may utilize the services of City employees or of outside firms or persons such as certified public accountants or auditors, each of whom shall possess full city authority to conduct said inspections.

Annual review of assessment

All of the assessments imposed pursuant to this chapter shall be reviewed by the Carmel City Council annually in April of each year, based upon the annual report prepared by the Advisory Board. The Advisory Board shall complete its report not later than the last day of March each year. After approval of the annual report, the Carmel City Council shall conduct a public hearing to levy assessment for the ensuing fiscal year. If at the conclusion of the public hearing, there are written protests by the owners of the lodging operations within the HID that would pay fifty percent (50%) or more of the total assessments of the entire HID, there will be no assessed levy in the ensuing fiscal year.

Imposition of initial assessment.

The Carmel City Council hereby levies and imposes and orders the collection of the initial assessment to be imposed upon lodging operations in the HID described above, which shall be calculated based upon \$1 per occupied room per night. Such levy shall begin on the effective date of the ordinance adopting the HID.

Use of revenue

The activities to be provided by the HID will be funded by the levy of the assessments. The total revenue from the levy of assessments with the HID shall not be used to provide improvement or activities outside the HID or for any purpose other than the purpose specified in the resolution of intention. The proceeds of the assessment shall be spent to administer marketing and visitor programs to promote the City of Carmel as a tourism destination. All funds shall be expended consistent with the purpose of the Law. HID assessment revenues remaining at the end of any fiscal year may be use in subsequent years in which HID assessments are levied as long as they are used consistent with the requirement of this Section. The Carmel City Council shall consider recommendations made by the Advisory Board as to the use of assessment revenues.

Delinquency, penalty and interest

- A. Any lodging operation that fails to remit any assessment imposed by this ordinance within the time required shall pay a penalty of ten (10%) percent of the assessment amount in addition to the assessment. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the assessment in addition to the amount of the assessment and the ten percent penalty first imposed.
- B. In addition to the penalties imposed in this chapter, any operator who fails to remit any assessment imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Any and all remedies available to the City of Carmel-by-the-Sea for other non-payment of assessments shall be applicable in the event of non-payment of an assessment under this chapter. Any penalty and interest fees collected from a lodging operation due to delinquency shall be remitted to the City of Carmel-by-the-Sea for any lawful purpose.
- C. Any assessment required to be paid by any lodging operation under the provisions of this chapter shall be deemed a debt owed by the lodging operation to the City. Any person owing money to the City under provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

Advisory board.

The Advisory Board shall review the implementation of this chapter, the implementation of programs and activities funded through this chapter, and advise the City Council on the amount of the district's assessments and on the services, programs, and activities to be funded by the assessments, and shall perform such other duties as required by the Law, including preparing the Annual Report. The Annual Report shall be submitted to the City Council no later than the last day of March each year. The City Council shall ensure that the Advisory Board has timely access to all public information regarding collection, disbursement, and uses of the funds collected under the terms of this ordinance.

Modification or disestablishment.

The City Council may modify the provisions of this chapter or may disestablish the HID or parts of the HID after adopting a resolution of intention to such effect, and after adoption of an ordinance in compliance with the Law.

Criminal penalties

In addition to the civil penalties and action set forth in this chapter for failing to comply with the provisions of this chapter, the following criminal sanctions may be utilized at the discretion of the City, either together with or completely separate from the civil remedies:

- A. Any person violating any of the provisions of this chapter shall be guilty of an infraction and shall be punishable therefore by a fine of not more than five hundred dollars per occurrence.
- B. Any operator or other person who fails or refuses to furnish on time any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the City Administrator, or who renders a false or fraudulent return or claim, is guilty of an infraction, and is punishable as set out in this section.
- C. Any person required to make, render, sign, or certify any report or claim who makes any false or fraudulent report or claim with the intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of an infraction and is punishable as set out in this section.

Section 5.

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state law, including, without limitation, the Constitution of the State of California. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to a particular appeal, the validity of this ordinance and its sections, subsections and clauses in regards to other contracts, shall not be affected.

Section 6.

This ordinance shall become effective on September 7, 2012.

Section 7.

The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original ordinances of the City and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted. Before the expiration of 30 days after passage of this ordinance, the City Clerk shall cause the same to be posted in three public places within the City of Carmel-by-the-Sea.