

PLEASE NOTE:

This copy of Ordinance No. 218.3 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER: 218.3**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 13 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO TRANSIENT OCCUPANCY TAX REFUNDS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the City Council wishes to clarify the current procedure for taxpayers to obtain a refund of the transient occupancy tax requiring the taxpayer to pay the tax prior to bringing a court action for a refund; and

**WHEREAS**, the City Council finds that with the inclusion of the amendments listed below, the Municipal Code remains internally consistent; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

**NOW THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2**

Section III-13-12.06 is hereby added to Chapter 13, Title III, to read as follows:

[III-13-12.06 Actions By Taxpayers](#)

[It shall be a condition that, prior to the filing of any lawsuit, of any kind whatsoever, including a claim for refund of taxes, injunction or writ of mandate or other equitable process, the payment of all taxes, interest and penalties as determined by the City shall be required to be paid as a condition to seeking such judicial review of any tax liability. In addition, no such legal action shall be proper unless all of the administrative remedies provided by this chapter shall have first been exhausted.](#)

**SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

**SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.