

ORDINANCE NO. 1403

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE TO AUTHORIZE THE USE OF LIEN PROCEDURES FOR THE COLLECTION OF DELINQUENT TRANSIENT OCCUPANCY TAXES AND TO CLARIFY THAT A TAX MUST BE PAID BEFORE FILING FOR A REFUND OR JUDICIAL RELIEF

TITLE VI—BUSINESS, PROFESSIONS AND TRADES CHAPTER 3—TRANSIENT OCCUPANCY TAX

The City Council of the City of Arcata does ordain as follows:

Section 1: Title VI—Business, Professions and Trades, Chapter 3—Transient Occupancy Tax, Section 6411 of the Arcata Municipal Code is hereby amended to the following:

SEC. 6411. Collection of tax.

(a) *Actions to collect.* 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 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 under the provisions of this Chapter shall be liable to an action brought in the name of the City of Arcata for the recovery of such amount.

(b) *Recording tax lien.* If any amount required to be paid to the City under this Chapter is not paid when due, the Finance Director may record in the Office of the Humboldt County Recorder a certificate which specifies the amount of tax, penalties and interest due, the name and address of the operator owing the tax and liable therefor as it appears on the tax assessment roll, and the fact that the Finance Director has complied with all provisions of this Chapter in the determination of the tax, interest and penalties required to be paid. From the date of recording in the Office of the Humboldt County Recorder, the amount to be paid together with interest and penalties shall constitute a lien upon the real property in the County owned by the operator or acquired by him afterwards and before the lien expires. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of recordation of the lien unless sooner released or otherwise discharged.

(c) *Assessment and Lien.* Whenever delinquent taxes and penalties are not paid to the City after proper notice, the total uncollected amount including tax, penalties and administrative fees may become assessments, and the City Clerk may compile a list of such assessments together with parcel number designations and addresses upon which the assessments are being fixed. After notice and hearing, and upon confirmation of the imposition of the liens by resolution of the City Council, the City Clerk shall file a certified copy of the approved resolution with the Humboldt County Tax Collector, directing that all unpaid transient occupancy taxes, penalties and administrative fees be entered as lien charges against said property as it appears on the current assessment roll. Liens shall be collected at the same time and in the same manner, subject to the same penalties and interest upon delinquencies, as the general real property taxes are collected for the City. The City Clerk shall present for recording appropriate notices of the imposition of these liens with the Humboldt County Recorder.

(d) *No lien preference.* Nothing in this Chapter shall give the City a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

(e) *Remedies not exclusive.* The remedies and penalties provided for in this Chapter shall be cumulative and not exclusive, and shall not supersede or limit any and all other remedies that may be available.

Section 2: Section 6411.5 is added to Title VI—Business, Professions and Trades, Chapter 3—Transient Occupancy Tax, of the Arcata Municipal Code as follows:

SEC. 6411.5. Payment of taxes prior to refund or Judicial Relief.

No legal or equitable process shall be issued in any proceeding in any court against the City or any officer to prevent or enjoin the collection of any tax sought to be collected pursuant to this Chapter, and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.

Section 3: **Severability.** If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 4: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: May 5, 2010

ATTEST:

/s/ Randal J. Mendosa
City Clerk, City of Arcata

APPROVED:

/s/ Alexandra Stillman
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1403**, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California, on the 5th day of May, 2010, by the following vote:

AYES: **STILLMAN, ORNELAS, WHEETLEY, BRINTON, WINKLER**

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

/s/ Randal J. Mendosa
City Clerk, City of Arcata