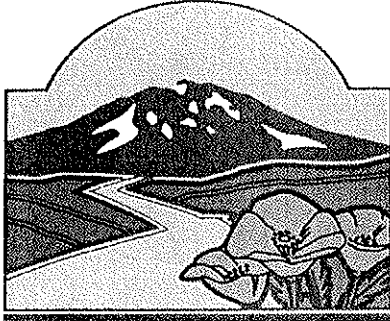


CITY OF  
ANDERSON



# AGENDA ITEM

February 16, 2010, City Council Meeting

Approved for Submittal By:

City Manager

*David Shegley*

To Be Presented By:

for - Mike Fitzpatrick

*D. Shegley*

To: Honorable Mayor and Members of the Anderson City Council

From: Mike Fitzpatrick, City Attorney  
Telephone 229-1370

Date: February 16, 2010

## SUBJECT

**Modify Motel Tax Ordinance to allow City to place liens on motel property for delinquencies in paying motel taxes to City.**

## RECOMMENDATION

The City Attorney recommends that the City Council:

**Enact Ordinance No. 764 (second reading), allowing liens to be placed on motels for delinquencies in paying motel taxes to the City, as introduced on February 2, 2010 (first reading).**

## FISCAL IMPACT

This ordinance adds another tool for the City to use in collecting unpaid taxes in the event of a delinquency and in that manner may have a positive effect on City finances.

## **DISCUSSION and BACKGROUND**

On February 2, 2010, the City Council introduced this ordinance to put in place a useful tool for collecting delinquencies of motel taxes.

The City collects "motel taxes," otherwise referred to as "transient occupancy taxes" from motels within the City of Anderson as a source of general fund revenue. These taxes are collected from patrons of our local motels as they use the facilities and are supposed to be passed through from the motel owners to the City on a regular basis together with a report summarizing the occupancy rates and amounts collected.

On occasion, motel owners may become delinquent in submitting their reports and in paying their taxes. The present Municipal Code provisions make it a misdemeanor for a motel owner to fail to collect and pay these taxes. Our Code also allows the City to pursue a civil judgment against a motel owner for failing to pay these taxes. This proposed ordinance would provide a third tool, that being the ability of the City to impose a property tax lien on motel properties when their motel taxes become delinquent.

Before a lien could be placed on a property, the motel owner would be allowed an administrative hearing before the Finance Director and the right to appeal his or her determination to the City Council. The City's lien would not have priority over earlier recorded liens but it would still be a useful tool in some cases for the City to use in collecting on delinquencies.

Tonight's action, the second reading, will enact this ordinance, and it will be effective 30 days from the date of adoption.

## **ATTACHMENTS**

1. Ordinance No. 764

## ORDINANCE NO. 764

**AN ORDINANCE OF THE CITY OF ANDERSON  
MODIFYING THE TRANSIENT OCCUPANCY TAX  
PROVISIONS OF THE ANDERSON MUNICIPAL CODE**

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

A. Section 3.40.130 of the Anderson Municipal Code is amended by adding the following language at the end thereof:

“The City Clerk is authorized pursuant to this ordinance and Government Code Sections 37104 through 37109 to issue subpoenas requiring the attendance of witnesses or production of documents in proceedings pending before it and, upon signature of a subpoena by the Mayor, may have such subpoena served in accordance with the California Code of Civil Procedure Section 1987 for the purpose of enforcing the provisions of this Chapter.”

B. The following new Code sections shall be added to Chapter 3.40 of the Anderson Municipal Code:

**3.40.180 Liens authorized for delinquent taxes, interest and penalties.** If any amount required to be paid to the City under this Chapter is not paid when due, the finance director may, within three years after the amount is due, record in the Office of the Shasta County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address of the operator liable for the same as it appears on the records of the City, and the fact that the finance director has complied with all provisions of this Chapter in the determination of the amount required to be paid. Said certificate shall constitute a lien.

**3.40.181 Effective Date of Lien.** From the time of the recording of the certificate of tax, penalties and interest due, the amount required to be paid together with penalties and interest constitutes a lien upon real property in the County owned by the operator or acquired by him or her afterward and before the lien expires. The lien has the force, effect and priority of a judgment lien for the payment of tax and shall continue for ten years from the time of filing the certificate unless sooner released or otherwise discharged. This Chapter does not give the City a preference over any recorded lien that was attached prior to the date when the amounts required to be paid became a lien.

**3.40.182 Priority of Tax Lien on Property of Operator.** The amounts required to be paid by any operator under this Chapter shall be satisfied first in any of the following cases:

- a. Whenever the operator is insolvent;
- b. Whenever the operator makes a voluntary assignment of his or her assets;
- c. Whenever the estate of the operator in the hands of executors, administrators or heirs is insufficient to pay all the debts due from the deceased; or
- d. Whenever the estate and or property of an absconding, concealed or absent operator required to pay any amount under this Chapter are levied upon by process of law.

**3.40.183 Warrant for Collection of Tax.** At any time within three years after any operator is delinquent in the payment of any amount required to be paid under this Chapter or within ten years of the last recording of a certificate of lien, the finance director may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this Chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The finance director may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution.

**3.40.184 Seizure and Sale of Operator's Property.** At any time within three years after any operator is delinquent in the payment of any amount required to be paid under this Chapter or within three years of the last recording of a certificate of lien by the City, the finance director may forthwith collect the amount in the following manner: The finance director shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the California Code of Civil Procedure or other applicable laws and regulations. The finance director shall obtain a warrant from a court of competent jurisdiction prior to entering upon property of the operator without the permission of the operator."

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This Ordinance shall be published in the Valley Post, a newspaper of general circulation in the City of Anderson, in the manner provided by Section 36933 of the Government Code of the State of California, and shall be effective 30 days after its passage.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Anderson on February 2, 2010, and enacted at a regular meeting of the City Council of the City of Anderson on February 16, 2010, by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

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Norma Comnick, Mayor

ATTEST:

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Juanita Barnett, City Clerk