

ORDINANCE NO. 15-09
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF RICHMOND REPEALING CHAPTERS 13.08 THROUGH

13.36 OF THE RICHMOND MUNICIPAL CODE AND
ADOPTING A NEW CHAPTER 13.08 REGARDING
APPEALS AND REMEDIES FOR TAX AND FEE
DISPUTES

THE COUNCIL OF THE CITY OF RICHMOND DO ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE. At present, many of the provisions of the Richmond Municipal Code governing claims for refunds of taxes and fees paid to the City appear in Chapter 1.10 and Chapters 13.08 through 13.36 of that Code. The purpose of this Ordinance is to recodify those existing requirements and to repeal certain outdated provisions specific to real property taxes. To the extent the provisions of the Richmond Municipal Code as amended by this Code are substantially the same as the provisions of that Code as it read prior to the effectiveness of this Ordinance, they shall be construed as continuations of those prior provisions and not as new enactments.

SECTION TWO. CODE AMENDMENT. Chapters 13.08, 13.12, 13.16, 13.20, 13.24, 13.28, 13.32, and 13.36 of the Richmond Municipal Code are hereby repealed.

SECTION THREE. CODE AMENDMENT. A new Chapter 13.08 of the Richmond Municipal Code is hereby adopted to read as set forth in Appendix A to this ordinance.

SECTION FOUR. TRANSITIONAL PROVISION. Any person who paid or pays a tax, fee or charge under protest in compliance with Sections 13.36.140 and 13.36.150 or any other provision of the Richmond Municipal Code, or who filed or files a claim for a refund of a tax, fee or other charge under Section 1.10.010 or any other provision of the Richmond Municipal Code, before the effective date of this Ordinance (hereinafter, "claimant") may elect to proceed with the determination of that protest or refund claim under the provisions of the Richmond Municipal Code either as those provisions read prior to the adoption of this Ordinance or as those provisions read pursuant to this Ordinance. A decision to proceed under the provisions of the Richmond Municipal Code as those provisions read prior to the adoption of this Ordinance shall be communicated to the Finance Director of the City in writing within 15 days of the effective date of this Ordinance or the claimant shall be conclusively deemed to have elected to proceed under the provisions of the Richmond Municipal Code as amended by this Ordinance. Any payment under protest or refund claim submitted to the City on or after the effective date of this Ordinance shall be determined pursuant to the provisions of the Richmond Municipal Code as amended by this Ordinance.

SECTION FIVE. SEVERABILITY. Should any provision, section, paragraph, sentence or word of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions, sections, paragraphs, sentences or words of this ordinance shall remain in full force and effect and, to that end, the provisions of this ordinance are hereby declared to be severable.

SECTION SIX. EFFECTIVE DATE. This Ordinance shall take effect thirty days after its passage and adoption.

SECTION SEVEN. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

First introduced at a regular meeting of the City Council of the City of Richmond held on June 2, 2009, and finally passed and adopted at a regular meeting held on **June 16, 2009**, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 15-09 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on June 16, 2009.

EXHIBIT A

Chapter 13.08 PROCEDURES FOR ENFORCEMENT OF TAXES, FEES AND CHARGES

Sections:

- 13.08.010 Scope
- 13.08.020 Definitions; interpretation
- 13.08.030 Rule-making power of tax collector
- 13.08.040 Confidentiality of taxpayer information
- 13.08.050 Taxpayer remedies
- 13.08.060 Determination of liability for tax
- 13.08.070 Redetermination
- 13.08.080 City's remedies
- 13.08.010 Scope

The provisions of this chapter are applicable to all taxes, fees or charges owing under any other provisions of this code, including, but not limited to chapters 7.04 (business licenses), 7.88 (transient occupancy tax), 7.94 (telecommunications franchises), 7.104 (tobacco retailers), 13.40 (documentary transfer tax), 13.50 (hazardous materials facilities licensing), 13.52 (utility users tax), and 13.54 (telecommunications users tax). The provisions of this chapter are intended to supplement, and not contradict other, more specific provisions of this code with respect to particular taxes, fees and charges. If there should be a conflict between a provision of this chapter and a provision of another chapter of this code regarding a particular tax, fee or charge, then the provisions of that other chapter shall control over the provisions of this chapter.

13.08.020 Definitions; Interpretation

Unless the context clearly indicates another meaning was intended, the provisions of this chapter shall be interpreted in light of the following:

- (a) CHAPTER means a chapter of this code, SECTION means a section of this code, and SUBDIVISION means a subdivision of a section in which that term occurs unless some other section is expressly mentioned.
- (b) The present tense includes the past and future tenses, and the future, the present.
- (c) The masculine gender includes the feminine and neuter.
- (d) The singular number includes the plural, and the plural the singular.
- (e) SHALL is mandatory and MAY is permissive.

(f) PERSON includes any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind.

(g) PROPERTY includes all matters and things, real, personal and mixed, capable of private ownership.

(h) RETURN means an application, return, or any other information a taxpayer submits, or is required to submit, to the city pursuant to this code with respect to the enforcement of any tax under this code.

(i) TAX means a tax, fee or other charge made payable to the city pursuant to this code.

(j) TAX COLLECTOR means the official of the city charged by the chapter of this code establishing a duty to pay a tax with the enforcement of that tax. If no such official is designated by that chapter, TAX COLLECTOR shall mean the director of finance of the city or his or her designee.

(k) THIRD-PARTY TAX means a tax which this code requires someone other than the taxpayer to collect and remit to the city and includes, without limitation, the transient occupancy tax imposed by chapter 7.88 and the utility users taxes imposed by chapters 13.52 and 13.54.

13.08.030 Rule-making power of the tax collector

The tax collector is authorized to make such rules and regulations as may be necessary to aid or assist in enforcement of the provisions of any tax made payable by this code. Notwithstanding anything in this chapter to the contrary, such rules and regulations may include withholding issuance of a license or permit related to the tax in question when the underlying activity violates this code or any state or federal law. The tax collector may prescribe the extent to which any rule or regulation shall be applied with retroactive effect. A copy of such rules and regulations shall be on file and available for public examination in the tax collector's office. Failure or refusal to comply with any rule or regulation promulgated by the tax collector shall constitute a violation of this code provided that notice of that rule or regulation is given in the manner required by law for publication of ordinances of the city.

13.08.040 Confidentiality of taxpayer information

(a) Except where disclosure is otherwise required by law, it is a violation of this section for any officer, employee or agent of the city to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records or any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return, copy thereof or any book containing any abstract

or particulars thereof to be seen or examined by any person, except as set forth below. These confidentiality provisions also apply to former officers, agents, and employees of the city.

(b) Otherwise confidential information may be disclosed in any federal, state, city or county administrative proceeding pertaining to tax administration, determination, assessment, collection, or enforcement, or pertaining to any civil or criminal liability arising under this code if the information concerns a person who is a party to the proceeding, or the proceeding arose out of, or in connection with determining that person's civil or criminal liability for, or the collection of that person's liability with respect to, a tax.

(c) Disclosure of otherwise confidential information may be made to the extent reasonably necessary to obtaining information bearing on the determination, assessment, collection, or enforcement of any civil or criminal liability arising under this code.

(d) Disclosure of otherwise confidential information may be made to other officers, employees or agents of the city in matters preparatory to any judicial or administrative proceeding pertaining to the administration or enforcement of any civil or criminal liability arising under this code.

(e) If the tax collector determines that a liability owing from a taxpayer may be collected from another person, the tax collector may disclose to such other person information relevant to the determination of tax due or owing from the taxpayer.

(f) A taxpayer, his or her successors, receivers, trustees, executors, administrators, assignees and guarantors, and their duly authorized legal representatives, may be given information as to any unpaid tax, interest and penalties or other sums due under this code.

(g) Notwithstanding any other provision of this code, the tax collector is authorized to enter into and to implement agreements with the California Franchise Tax Board, the State Board of Equalization, and the Internal Revenue Service for the exchange of information for official purposes of those agencies.

(h) The tax collector may disclose to any city officer, employee or agent for official purposes any information described in subsection (a) in aggregate or other form that does not disclose the identities of particular taxpayers.

(i) Nothing in this section shall impose any liability upon any officer, employee or agent of the City for any disclosures made in good faith in the performance of his or her duties.

13.08.050 Taxpayer remedies

(a) Authority to correct errors. All or any portion of any tax, penalty, interest or costs may be cancelled by the tax collector if levied:

- (1) More than once;
- (2) Erroneously or illegally; or,
- (3) In violation of a taxpayer's rights under any applicable laws, including the Constitutions of California and the United States, and judicial decisions implementing such laws.

(b) Duty of tax collector on discovery of error. On discovery of any error that justifies cancellation of a tax, penalty, interest or costs pursuant to subsection (a), the tax collector shall certify the facts to the city manager and cancel that tax, penalty, interest or costs.

(c) Payment under written protest. Any taxpayer may pay a tax due under this code under protest. The protest shall be in writing, specifying:

- (1) Whether the whole tax is claimed to be void, or, if only a part, what part.
- (2) The grounds on which the claim is founded.
- (3) The other information required by section 1.10.010.

(d) Exhaustion of administrative remedies. Prior to seeking judicial relief, a taxpayer must exhaust administrative remedies by: (i) petitioning the tax collector for redetermination of his, her or its tax liability, and (ii) paying the full amount owed as set forth in the final determination of that petition, and (iii) presenting a claim for refund under sections 1.10.010.

(e) Suit for refund; duty to exhaust administrative remedies. Within the time permitted by section 1.10.010 and upon exhaustion of administrative remedies as required by subsection (d), action may be brought against the city to recover the tax paid under protest. The action shall be brought only:

- (1) As to the part of the tax claimed to be void in the written protest required by subsection (c).
- (2) On the grounds specified in that protest.
- (3) By the person making payment, his guardian, executor, administrator, or heir. Payment of a judgment against the City shall not be made to an assignee of the person bringing the action.
- (4) As otherwise required by section 1.10.010 of this code and other applicable law.

13.08.060 Determination of liability for tax

(a) If the tax collector determines that: (i) a taxpayer has failed to pay a tax when due under this code, (ii) a return is deficient, (iii) that the amount of any tax required to be paid to the city by any person has not been paid as required, or (iv) that a person other than the taxpayer is jointly and severally liable for any tax, the tax collector may determine the amount required to be paid upon the basis of the facts contained in the

return or upon the basis of any information within the tax collector's possession. One or more deficiency determinations may be made of the amount due for one or more periods.

(b) The amount of a determination, inclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the date payment of the tax was due under this code until the date of payment.

(c) Any determination under this subsection shall be prima facie evidence of the person's liability in any subsequent administrative or judicial proceeding.

(d) The tax collector shall serve the person or persons determined to be liable for the tax as determined under this section with written notice by mail of the determination and penalty.

13.08.070 Redetermination

(a) Any person against whom a determination is made under this chapter may petition the tax collector for a redetermination within 15 days after service of notice of the determination. If a petition for redetermination is not filed within that time, the determination becomes final. The final determination may be enforced or collected by any method authorized by law, including but not limited to lien, levy, and judicial enforcement, including provisional remedies and injunctive relief.

(b) Every petition for redetermination shall be verified by a person against whom the tax collector made the determination, stating under penalty of perjury the specific grounds upon which the petition is founded, with sufficient specificity to enable the tax collector to evaluate the petition, and verifying the information and authenticating the records upon which the petition relies. If the tax collector determines that the petition fails to state specific grounds for redetermination, lacks sufficient specificity to allow him or her to evaluate it, or is not accompanied by supporting information and records the tax collector reasonably deems necessary to evaluate and decide the petition, the tax collector may deny the petition as incomplete or require the petitioner to supplement it. The petitioner shall submit such supplemental information to the tax collector within 15 days of mailing of the tax collector's written request or such longer period as the tax collector may specify in the request. Failure of the petitioner to timely provide all of the information and records set forth in the written request shall be sufficient ground for the tax collector to deny the petition.

(c) If a petition for redetermination is timely filed in the manner required by this chapter, the tax collector shall reconsider the determination. If requested in the petition, the tax collector shall grant the person or the person's authorized representative an oral hearing, and shall give such person or representative not less than 10 days' notice of the time and place of the hearing. The tax collector may continue a hearing from time to time.

(d) After consideration pursuant to subsection (c), the tax collector may decrease or

increase the amount of a determination, including the amount of the tax, penalties or interest. The amount may be increased only if the tax collector mails a written claim for the increase to the person subject to the determination at least 5 days before the hearing or, if no hearing is requested, after the tax collector provides the person subject to the determination 5 days in which to respond to the written claim before a decision is made upon it. Nothing in this subsection shall preclude a new audit or determination by the tax collector of a new or supplemental deficiency. The burden of proof in any proceeding for redetermination shall be on the taxpayer, who shall have the burden of proving that the tax collector's determination is incorrect.

(e) The decision of the tax collector upon a petition for redetermination becomes final 15 days after it is mailed to the petitioner and all sums due pursuant to the redetermination are then due and payable. Any sum the tax collector determines was overpaid shall be refunded to the person entitled to the refund promptly following finality of the decision on the petition for redetermination, with interest at the rate of . . . of one percent per month or fraction thereof; or the average rate of interest computed over the preceding six-month period lawfully obtainable by the city treasurer on deposits of public funds at the time refund is made, whichever rate is lower, and shall be computed from the date of payment to the date of refund except for amounts refunded as a result of a final judicial determination of the invalidity of any portion, or any administrative interpretation, of this code, in which case interest shall be computed from the date of the claim for refund is made to the city to the date of refund.

(f) Judicial review of the tax collector's final decision on a petition for redetermination may be had consistently with chapter 1.08 of this code.

13.08.080 City's remedies

(a) Suit. The tax collector may bring an action in any court of competent jurisdiction to recover in the name of the city any tax due and payable under this code, together with penalties, interest, and costs, including reasonable attorneys' fees. The tax collector shall be entitled in such actions to all provisional remedies provided by law. Any such action shall be commenced within three years from the date any amount of taxes became due and payable, or from the date a return is required to be or actually is filed, whichever is later; except in the case of any deficiency determination pursuant to this chapter, in which case any such action shall be commenced within three years after such determination became final. However, there shall be no limitation on the time in which such actions may be commenced in cases of fraud, intent to evade this code, or failure to file a return.

(b) Lien. When the amount of any tax, penalty or interest which has become due and payable remains unpaid for 15 days, the tax collector may record a tax lien with a county assessor, thereby creating a tax lien on all of the taxpayer's property and rights to property, including realty, personality, or intangibles in that county. The tax collector may record or file such tax lien in any other office of any other jurisdiction as permitted by law. A tax lien shall identify the tax collector as the lienor, the property subject to the

lien, and the amount of the lien. Upon recoding, a copy of the tax lien shall be mailed to or personally served upon the taxpayer or other person determined to be liable for the tax at that person's last address reflected in the tax collector's records. A tax lien has the force, effect and priority of a judgment lien and continues for 10 years from the date of recording, unless sooner released or otherwise discharged.

(c) Penalties. Unless another provisions of this code prescribes a different penalty with respect to a particular tax, any person who fails to file any return and pay the tax prescribed in this code within thirty days after it becomes due shall be deemed delinquent and shall be assessed the following penalty:

- (1) Ten percent of the tax if the payment is made within one to thirty days after it became delinquent;
- (2) Twenty-five percent of the tax if the payment is made within thirty-one to sixty days after it became delinquent; and
- (3) Fifty percent of the tax if the payment is made more than sixty days after it became delinquent. Such penalty shall become part of the tax then required to be paid under this code and such person shall also be subject to all further penal provisions and remedies contained in this code or authorized by other law.

(d) Waiver of Penalties. In addition to the tax collector's authority under subsections (a) and (b) of section 13.08.050 of this code, the tax collector may waive any penalty or interest assessed under this chapter, in whole or in part, upon a finding of any of the following:

- (1) Failure to make timely payment or return or otherwise comply with the provisions of this code was due to reasonable cause and not willful neglect;
- (2) The taxpayer made an inadvertent error in the amount of payment made, provided any deficiency is cured by payment in full to the tax collector within 15 days after notice of the deficiency is mailed to the taxpayer by the tax collector.

(e) Costs. In addition to the penalties specified by this code, the tax collector may recover the actual costs of collection incurred by the city, including reasonable attorney's fees and costs, including such costs incurred in administrative or judicial enforcement proceedings.

(f) Remedies cumulative. The remedies, penalties and procedures provided under this chapter are cumulative and are not exclusive of any other available remedies, penalties and procedures provided by this chapter, this code, or other applicable law.

(g) Violations separate and continuing. Each day that a violation of this code exists constitutes a separate offense. Each section of this code violated constitutes a separate violation for any day at issue. Payment of a penalty shall not excuse a failure to correct a violation nor shall it bar any further enforcement action by the city. If penalties and costs are the subject of administrative or judicial review, the accrual of such penalties and costs shall be stayed until such review is final.

(h) Third-party liability. The liability at law or in equity of a successor, transferee or alter ego of any taxpayer or other person determined to be liable for any tax, interest, cost or penalty under this code shall be determined, collected and paid in the same manner and subject to the same provisions and limitations as in the case of a determination pursuant to sections 13.08.060 et seq. Nothing in this subsection shall be construed to limit the rights or procedures available to the tax collector to collect an amount owing from any successor, transferee or alter ego, at law or in equity, as may be provided by other applicable law.