

## **ORDINANCE NO. 4462**

### **AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DEFERRING REMITTANCE OF RETURNS AND TAXES, WITHOUT PENALTY, PERTAINING TO THE TRANSIENT OCCUPANCY TAX AND THE LODGING BUSINESS IMPROVEMENT DISTRICT ASSESSMENT DUE BY NON-AGENT LODGING OPERATORS ON APRIL 30, 2020, UNTIL JULY 31, 2020**

**WHEREAS**, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic; and

**WHEREAS**, the County of Mendocino Health Officer declared a local health emergency related to the COVID-19 on March 4, 2020; and

**WHEREAS**, the County of Mendocino Director of Emergency Services proclaimed the existence of a local emergency related to COVID-19 on March 4, 2020; and

**WHEREAS**, on March 10, 2020, the Board of Supervisors of the County of Mendocino ratified the local emergency related to COVID-19 as proclaimed by the Chief Executive Officer/Director of Emergency Services and ratified the existence of a local emergency as proclaimed by the Health Officer; and

**WHEREAS**, in light of the COVID-19 pandemic and Governor Newsom's state of emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-25-20, ordering residents to heed any order by local public health officials, "including but not limited to the imposition of social distancing measures, to control the spread of COVID-19"; and

**WHEREAS**, the Mendocino County Health Officer, the California Public Health Officer, and the Governor of the State of California have imposed social distancing measures to control the spread of COVID-19, including orders to shelter in place and orders that prohibit non-essential travel and non-essential rental of transient lodging; and

**WHEREAS**, the Mendocino County Board of Supervisors passed Ordinance No. 4461 on March 31, 2020, making any violation of the County Health Officer's orders issued to control the spread of COVID-19 a violation of County law and declaring the same a nuisance; and

**WHEREAS**, the COVID-19 pandemic and the shelter-in-place orders immediately cut off revenue for the lodging operators, and unlike most industries also triggered a need to issue refunds for pre-bookings; and

**WHEREAS**, financial hardship increases the risk of noncompliance with the Health Officer's orders and may contribute to individual persons or businesses acting in a manner that places the public health at risk due to economic duress; and

**WHEREAS**, the prospect of penalties and interest can contribute to the financial hardship and economic duress of lodging operators; and

**WHEREAS**, the third quarter remittance of returns and taxes for the Transient Occupancy Tax ("TOT") and the Lodging Business Improvement District ("BID") assessment are coming due for lodging operators on April 30, 2020; and

**WHEREAS**, the imposition of penalties and interest for late remittal or payment of the TOT or BID assessment would only add to the burden of an industry that is already beset with significant uncertainty; and

**WHEREAS**, without immediate, temporary relief, lodging operators may not financially survive the current crises, potentially leaving lodging establishments vacant, or otherwise delay the reopening of the establishments; and

**WHEREAS**, tourism is a vital component of the Mendocino economy, and the lodging establishment provides a stable revenue source for the County; and

**WHEREAS**, it is uncertain how much of the anticipated approximate TOT and BID assessment amount due on April 30, 2020, would be collected in the absence of deferring the required remittal of returns and taxes; and

**WHEREAS**, deferring remittal or payment of the TOT and the BID assessment fixes the amount of money to be raised by taxation and the rate of taxes to be levied as described in Government Code section 25123(c) in that such deferment waives penalties and interest, if remittal or payment is made by the deferred date, that would have otherwise been assessed for late remittal or payment; and

**WHEREAS**, the immediate implementation of this ordinance is necessary because the TOT and BID assessment is currently due in two days, on April 30, 2020, and lodging operators must know when their returns and taxes are due to avoid penalty; and

**WHEREAS**, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction;

**NOW, THEREFORE**, The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

#### **SECTION 1. Findings and Purpose.**

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. The above recitals are true and correct, and are incorporated herein.
- B. The purpose of this ordinance is to provide temporary financial relief to lodging operators, other than managing agents, in the County of Mendocino, in order to help temporarily stabilize the lodging establishment businesses in Mendocino County during the COVID-19 pandemic and to reduce the risk of spread of COVID-19 by minimizing unnecessary travel and encouraging compliance with existing Health Officer orders.
- C. In order to provide temporary financial relief to lodging establishments, this ordinance defers remittance of returns and taxes pertaining to the Transient Occupancy Tax and the Mendocino County Lodging Business Improvement District assessment for three months.

## **SECTION 2. Definitions.**

- A. "BID" means the Mendocino County Lodging Business Improvement District.
- B. "Board" means the Mendocino County Board of Supervisors.
- C. "County" means the County of Mendocino.
- D. "MCC" means Mendocino County Code.
- E. "Operator" or "Lodging Operator" has the same meaning as MCC section 5.20.020(F) with respect to the provisions of this ordinance pertaining to the TOT, and has the same meaning as MCC section 5.140.030(x) with respect to the provisions of this ordinance pertaining to the BID assessment, with the exception that "operator" or "lodging operator" does not include within its meaning those operators that are managing agents, such as third party rental agencies, of any type or character other than an employee with respect to either the TOT or BID assessment.
- F. "Responsible Party" means an individual or legal entity, or the agent or legal guardian of such individual or entity, whose action or failure to act violated a COVID-19 Order.
- G. "TOT" means Transient Occupancy Tax.

## **SECTION 3. Applicability of Ordinance.**

- A. The provisions of this ordinance pertain to all lodging operators as defined by this ordinance.
- B. The ordinance shall apply only to the remittance of returns and taxes pertaining to the TOT and BID assessment for the third quarter of the 2019-2020 tax year, and not apply to any other period. Specifically, this ordinance applies to the reporting, remittal, and payment that would otherwise be due on April 30, 2020, pursuant to MCC Chapters 5.20 and 5.140, and does not apply to any other tax due or to any other quarterly reporting, remittal, or payment period.

## **SECTION 4. Deferral of Transient Occupancy Tax.**

- A. Notwithstanding the requirements of MCC Chapter 5.20, the April 30, 2020, deadline for all lodging operators to remit the returns and the TOT collected for the third quarter of the 2019-2020 tax year is hereby extended until July 31, 2020.
- B. All lodging operators are encouraged to remit all returns and taxes as soon as possible, but any lodging operator who does so on or before July 31, 2020, shall not be subject to any of the penalties and interest that would normally apply

pursuant to MCC Chapter 5.20 for late remittal pertaining to the third quarter of the 2019-2020 tax year.

- C. Lodging operators shall not file a return for the third quarter of the 2019-2020 tax year unless also remitting the collected TOT in full; the County will not accept any partial remittance of TOT taxes.
- D. Remittal of the TOT owed to the County on or before July 31, 2020, will be accrued in Fiscal Year 2019-2020.
- E. Penalties and interest will be imposed pursuant to MCC Chapter 5.20 after July 31, 2020, on all lodging operators that fail to remit their return and TOT taxes owed to the County by July 31, 2020.

#### **SECTION 5. Deferral of Business Improvement District Assessment.**

- A. Notwithstanding the requirements of MCC Chapter 5.140, the April 30, 2020 deadline for all lodging operators to remit the returns and pay the assessment due for the third quarter of the 2019-2020 tax year is hereby extended until July 31, 2020.
- B. All lodging operators are encouraged to remit all returns and pay all assessments as soon as possible, but any lodging operator who does so on or before July 31, 2020 shall not be subject to any of the penalties and interest that would normally apply pursuant to MCC Chapter 5.140 for late remittal and payment pertaining to the third quarter of the 2019-2020 tax year.
- C. Lodging operators shall not file a return for the third quarter of the 2019-2020 tax year unless also paying the required assessment in full; the County will not accept any partial payments of the BID assessment.
- D. Payments of the BID assessment to the County on or before July 31, 2020 will be accrued in Fiscal Year 2019-2020.
- E. Penalties and interest will be imposed pursuant to MCC Chapter 5.140 after July 31, 2020, on all lodging operator that fail to remit their return and pay the required assessment by July 31, 2020.

#### **SECTION 6. Severability.**

The provisions of this ordinance are separate and severable. If any provision of this ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the

remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

**SECTION 7. Effective Date.**

This ordinance shall take effect immediately as an urgency ordinance, and shall be applicable as of April 28, 2020, the date of approval of this ordinance.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this 28<sup>th</sup> day of April, 2020, by the following roll call vote:

AYES:	Supervisors Brown, McCowen, Haschak, Gjerde and Williams
NOES:	None
ABSENT:	None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

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JOHN HASCHAK, Chair  
Mendocino County Board of Supervisors

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Deputy

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS,  
Acting County Counsel

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO  
Clerk of the Board

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Deputy