

ORDINANCE NO. 2393

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, AMENDING THE ARCADIA MUNICIPAL CODE BY ADDING A PART 10 TO CHAPTER 6 OF ARTICLE II ("THE ADMINISTRATION CODE") TO ESTABLISH AN ATTORNEY FEES RECOVERY PROVISION FOR PREVAILING LITIGATION RELATED TO ALL LOCAL TAX COLLECTION MATTERS WITH AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

WHEREAS, in March 2021, the City of Arcadia ("City") was a party to prevailing litigation with Southern California Edison Corporation ("SCE") regarding the under-collection of Utility Users Tax ("UUT") as a result of SCE's improper application of greenhouse gas credits, which reduced the total tax base and resulted in less UUT revenue for the City; and

WHEREAS, the appellate court determined in *Torrance v. SCE* that greenhouse gas credits do not reduce the tax base and SCE shall provide prospective relief by starting to collect the tax properly for all SCE coalition clients such as the City; and

WHEREAS, according to the Arcadia Municipal Code ("AMC"), the City is entitled to penalties and interest as a result of improper assessment of UUT and simple negligence (such penalties in the amount of 15%). Currently, the AMC does not expressly contain an attorney fees recovery provision for collection of UUT; and

WHEREAS, several SCE Coalition Cities for similar tax collection matters have an attorney fees recovery provision in their Municipal Codes, and it is reasonable and appropriate for the City to be entitled to recover its attorney fees regarding enforcement of the collection of taxes due to the City; and

WHEREAS, it is in the best interest of the City to be reimbursed its attorney fees for all tax collection matters, including but not limited to current taxes established by ordinance such as UUT and Transit Occupancy Tax ("TOT"), and any future local taxes

established by ordinance hereinafter approved by the voters of the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Ordinance as if fully set forth herein.

SECTION 2. Part 10 (“Attorney Fees”) of Chapter 6 (“Taxes”) of Article II (“Administration”) of the Arcadia Municipal Code is hereby added to read in its entirety as follows:

“PART 10 – ATTORNEY FEES

Section 2697. – Action to Collect Attorney Fees

Any tax required to be paid by any operator under the provisions of this Part shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this Part shall be liable in an action brought in the name of the City for the recovery of such amount. In any action to collect taxes under this Part, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney’s fees; however, the amount of attorney’s fees awarded to a prevailing party shall not exceed the amount of attorney’s fees incurred by the City in the action or proceeding, and an award of attorney’s fees shall only be allowed where the City elects, at the initiation of the action or proceeding, to seek recovery of its own attorney’s fees.

This Part applies to all tax collection matters including current local taxes by ordinance including but not limited to UUT and Transit Occupancy Tax (“TOT”); and any other future local taxes by ordinance hereinafter added by the voters of the City.”

SECTION 3. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060©(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of same to be published at least once in the official newspaper of the City within fifteen (15) days after its adoption. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

[SIGNATURES ON THE NEXT PAGE]

Passed, approved, and adopted this 16th day of August, 2022.

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/s/ Tom Beck
Mayor of the City of Arcadia

ATTEST:

/s/ Gene Glasco
City Clerk

APPROVED AS TO FORM:

/s/ Stephen P. Deitsch
Stephen P. Deitsch
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF ARCADIA)

I, GENE GLASCO, City Clerk of the City of Arcadia, hereby certifies that the foregoing Ordinance No. 2393 was passed and adopted by the City Council of the City of Arcadia, signed by the Mayor and attested to by the City Clerk at an adjourned regular meeting of said Council held on the 16th day of August, 2022 and that said Ordinance was adopted by the following vote, to wit:

AYES: Danielson, Tay, Verlato, Cheng, and Beck

NOES: None

ABSENT: None

/s/ Gene Glasco
City Clerk of the City of Arcadia