

RESOLUTION NO. RES-2017-024

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING A RETROACTIVE AGREEMENT FOR COLLECTION OF ASSESSMENTS ON SANTA ROSA LODGING ESTABLISHMENTS RESULTING FROM SANTA ROSA'S PARTICIPATION IN THE SONOMA COUNTY TOURISM BUSINESS IMPROVEMENT AREA PER RESOLUTION NUMBER 25954; AND AUTHORIZATING THE REMITTANCE OF ANY ASSESSMENT FUNDS COLLECTED BUT NOT REMITTED BETWEEN JUNE 30, 2015, AND THE SIGNING OF A NEW AGREEMENT

WHEREAS, in 2001, recognizing the value of the tourism industry, the County of Sonoma initiated a public/private collaborative process to create the Sonoma County Tourism Bureau, and explore the creation of a tourism business improvement area; and

WHEREAS, with advocacy by the Sonoma County Lodging Association, Santa Rosa City Council passed Resolution Number 25954 attached hereto and incorporated herein as Exhibit A on May 4, 2004, consenting to the inclusion of the City of Santa Rosa within the proposed Sonoma County Tourism Business Improvement Area (SCTBIA); and

WHEREAS, with this and similar resolutions passed by all other incorporated Sonoma County cities except for Healdsburg and Sonoma, the subsequent Ordinance Number 5525 of the Board of Supervisors of the County of Sonoma attached hereto and incorporated herein as Exhibit B was passed, officially establishing the SCTBIA on November 2, 2004; and

WHEREAS, the first administrative agreement for collection of assessments for SCTBIA between the County and the City was entered into on December 28, 2004, with three subsequent agreements entered into in 2006, 2009, and finally in 2012, terminating on June 30, 2015; and

WHEREAS, due to the 2012 agreement's termination on June 30, 2015, assessments totaling \$870,735.49 were collected by the City and remitted out of contract between July 2015 and March 2016, and an additional \$740,191.94 was collected but not remitted between April to September 2016, necessitating a new agreement retroactive to the termination date of the last agreement and the additional need to authorize the release of the remaining unremitted funds.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves a retroactive agreement for collection of assessments on Santa Rosa lodging establishments resulting from Santa Rosa's participation in the Sonoma County Tourism Business Improvement Area per Resolution Number 25954.

BE IT FURTHER RESOLVED that the Council authorizes the City Manager to sign Administrative Agreement for Collection of Assessments for Sonoma County Tourism Business Improvement Area, attached hereto and incorporated herein as Exhibit C.

BE IT FURTHER RESOLVED that the Council authorizes the remittance of any assessment funds collected but not remitted between June 30, 2015, and the signing of a new agreement.

IN COUNCIL DULY PASSED this 14th day of February, 2017.

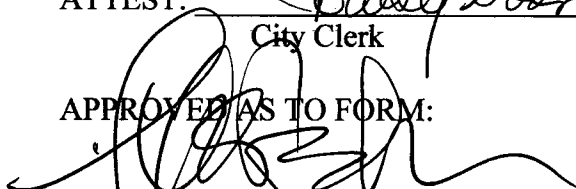
AYES: (6) Mayor Coursey, Vice Mayor Tibbetts, Council Members Olivares, Rogers, Sawyer, Schwedhelm

NOES: (0)

ABSENT: (1) Council Members Combs

ABSTAIN: (0)

ATTEST:  APPROVED: 
City Clerk Mayor

APPROVED AS TO FORM:

Interim City Attorney

- Exhibit A: City of Santa Rosa Resolution No. 25954
- Exhibit B: County of Sonoma Ordinance No. 5525
- Exhibit C: Administrative Agreement for Collection of Assessments for Sonoma County Tourism Business Improvement Area

RESOLUTION NO. 25954

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA CONSENTING TO THIS INCLUSION OF THE TERRITORY OF THE CITY OF SANTA ROSA WITHIN THE PROPOSED SONOMA COUNTY BUSINESS IMPROVEMENT AREA

WHEREAS, the Board of Supervisors of the County of Sonoma is, or shortly will be, considering the adoption of an Ordinance, attached as Exhibit A and made a part of this resolution, establishing the Sonoma County Tourism Business Improvement Area ("BIA") in accordance with the Parking and Business Improvement Area Law of 1989 (Streets and Highways Code Sections 36500, *et seq.* [the "Law"]); and

WHEREAS, the Law requires the consent of the Council of City of Santa Rosa before the area of the BIA may include the territorial limits of the City; and

WHEREAS, the Sonoma County Lodging Association has requested that the Council give its consent to the inclusion of the territory of the City within the BIA; and

WHEREAS, this Council has considered the request, the attached ordinance, and the comments of the operators of lodging establishments situated within the City and of others to the request.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa consents to inclusion of the territorial jurisdiction of the City of Santa Rosa within a BIA to be established by the Sonoma County Board of Supervisors substantially as set forth in the attached ordinance.


IN COUNCIL DULY PASSED this 4th day of May, 2004.

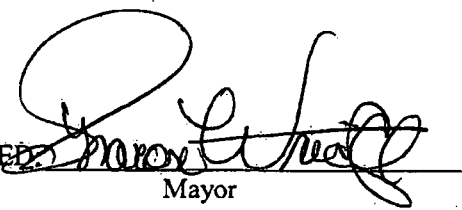
AYES: (6) Mayor Wright; Councilmembers Bender, Blanchard, Evans, Martini, Rabinowtish

NOES: (0)

ABSENT: (1) Councilmember Condron

ABSTAIN: (0)

ATTEST: 
City Clerk

APPROVED: 
Mayor

APPROVED AS TO FORM:


City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, ESTABLISHING THE SONOMA COUNTY TOURISM BUSINESS IMPROVEMENT AREA

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I.

(a) Pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code sections 36500, et seq. (the "Law"), on [date] this Board adopted Resolution No. ____, entitled "TITLE," declaring its intention to form a business improvement area within the boundaries of the County of Sonoma, to be known as the "Sonoma County Tourism Business Improvement Area," providing for the levy of an assessment and charge to be imposed therein, fixing the time and place for hearing, and giving notice of the hearing.

(b) Resolution No. [], was duly published, and copies thereof were mailed, as provided by the Law.

(c) As specified in Resolution No. [], a hearing concerning the formation of the area was held on XXXXX, 2003, at [time] before this Board in the Board's chambers at 575 Administration Drive, Santa Rosa.

(d) At the hearing, all protests, both written and oral, made or filed, were considered and duly overruled and denied, and this Board determined that there was no majority protest to the formation of the Area within the meaning of Section 36523 of the Law.

(e) Pursuant to Section 36521.5 of the Law, the County of Sonoma may not form a business improvement area within the territorial jurisdiction of a city without the consent of the city council of that city. The Board has received resolutions providing such consent from each of the following cities: [list].

SECTION II.

Chapter 33, pertaining to the creation of the Sonoma County Tourism Business Improvement Area, is added to the Sonoma County Code to read as follows:

**CHAPTER 33. SONOMA COUNTY TOURISM BUSINESS
IMPROVEMENT AREA**

Section 33-1 Authority.

This chapter is adopted pursuant to the "Parking and Business Improvement Area Law of 1989," Sections 36500 et seq. of the California Streets and Highways Code, and Resolution No. [], adopted by the Board of Supervisors on DATE. Such resolution was published and mailed as provided by law, and hearings thereon were held by the Board at a public hearing on DATE, at which time all persons desiring to be heard, and all objections or protests made or filed, were fully heard and considered. The Board duly concluded the hearing on [date], and determined that protests objecting to the formation of the Area had not been received from the owners of lodging businesses in the proposed Area which would pay 50 percent or more of the Assessments proposed to be levied. The Board of Supervisors finds that the Assessments levied on lodging businesses pursuant to this Chapter are based upon the estimated benefit to the assessed lodging businesses within the Area, and that all operators of lodging businesses in the Area against whom Assessments are proposed to be levied will be benefited by the expenditure of funds raised by the Assessments.

Section 33-2 Definitions.

Except where the context otherwise requires, as used in this Chapter:

"Administrative Fee" means a fee equal to the actual costs of collection and administration, not to exceed two percent (2%) of the amount of Assessments collected, which a Collecting Entity is entitled to retain from the Assessments collected within their respective territorial jurisdictions.

"Advisory Board" means the advisory board appointed by the Board of Supervisors pursuant to this Chapter.

"Annual Report" means the annual report required by Section 36533 of the Law.

"Area" means the Sonoma County Tourism Business Improvement Area created by this Chapter and as delineated in Section 33-3.

"Assessment" means the levy imposed by this Chapter for the purpose of funding activities and programs promoting tourism in the Area.

"Board of Supervisors" means the Board of Supervisors of the County of Sonoma.

"City" or "Cities" shall mean, individually or collectively, as the context may require, the various Cities or Towns of Sonoma County, excluding those Cities and Towns that have not consented to the imposition of Assessments within their territorial jurisdiction.

"City Council" means a city council of a City.

"Collecting Entity" means (1) for Lodging establishments located within the territorial jurisdiction of a City that has entered into an administrative agreement with the County pursuant to Section 33-6, the City in which the Lodging establishment is located; and (2) for all other Lodging establishments, the Sonoma County Tax Collector.

"Contractor" means a non-profit or for-profit entity with which the County of Sonoma contracts to carry out the services, activities, and programs to be funded by revenues from Assessments.

"County" means the County of Sonoma.

"Lodging" means any accommodation consisting of one (1) or more rooms or other living spaces which are occupied or intended or designed for occupancy by Transients for dwelling, lodging, or sleeping purposes. Such term includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, recreational vehicle park, or public or private campground. The term "Lodging" does not include an organized camp, as that term is defined in Section 18897 of the Health and Safety Code, or any establishment operated by a public or non-profit entity exclusively for the purpose of providing temporary shelter for the homeless.

"Marketing Activities" means activities designed to market the Area as a tourist destination, including the expenditure of funds to place advertising in any media, conduct public relations campaigns, perform marketing research, promote conventions and trade shows, and foster improved contacts within the travel industry, for the purpose of promoting tourism within the Area.

"Occupancy" means the use or possession, or the right to the use or possession, of any one or more rooms or portion thereof, or other living space, in any Lodging for dwelling, lodging, or sleeping purposes.

"Operator" means the person who is the proprietor of the Lodging, whether in the capacity of an owner, lessee, sublessee, mortgagee in possession, licensee, or other capacity. When the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article, and shall have the same duties and liabilities

as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered compliance by both.

“Parking and Business Improvement Area Law of 1989” or “Law” means the provisions of California Streets and Highways Code Sections 36500 to 36551, as they now exist or are hereafter amended.

“Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, or any public agency.

“Rent” means the consideration charged, whether or not received, for the occupancy of a space in a Lodging valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without deduction therefrom whatsoever.

“Room or other living space” means a room or any portion of any room in any Lodging; any tent cabin or any space designated for location of a mobile home or house trailer, tent trailer, recreational vehicle, tent, or other movable living space.

“Sonoma County Tourism Bureau” or “SCTB” means the Sonoma County Tourism Bureau, Inc., a California nonprofit mutual benefit corporation.

“Sonoma County Tourism Business Improvement Area” means that area created by this Chapter as a business improvement area pursuant to the Parking and Business Improvement Area Law of 1989.

“Sonoma County Tourism Business Improvement Area Fund” or “Fund” means the fund created pursuant to Section 33-7 of this Chapter.

“Tax Collector” means the Sonoma County Tax Collector.

“Transient” means any person who exercises occupancy or who is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a Lodging shall be deemed to be a Transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

Section 33-3 Area Established – Description.

Pursuant to the Parking and Business Improvement Area Law of 1989, a parking and business improvement area is hereby established, to be known as the "Sonoma County Tourism Business Improvement Area." The boundaries of the Area are the same as the boundaries of the County of Sonoma, but the Area does not include the territory of any incorporated city in Sonoma County that has not consented to the formation of the Area within its territorial jurisdiction.

Section 33-4 Authorized Uses.

The purpose of forming the Area as a business improvement area under the Law is to provide revenue to defray the costs of services, activities, and programs that promote and encourage tourism within the Area, which will benefit the Operators of Lodging establishments paying Assessments in the Area through the promotion of the scenic, recreational, cultural, and other attractions in the Area. Revenues from Assessments shall be used to conduct Marketing Activities designed to increase overnight visits to the Area. Revenues from Assessments may be used for programs, services, and activities outside the Area, if such programs, services, and activities are designed to promote and encourage overnight visits to the Area. Revenues from Assessments may also be used to pay or reimburse administrative costs incurred by the Contractor or County of Sonoma in connection with the creation of the Area and the Sonoma County Tourism Bureau, the transition of the current County-operated tourism marketing program to the Contractor, and the ongoing administrative costs associated with the Marketing Activities; provided, however, that the County's reimbursement for Assessment collection costs is limited as provided in Section 33-6. Revenues from Assessments collected in the Area may not be used for any purposes other than those set forth above.

Section 33-5 Imposition and Collection of Assessments.

(a) Each Operator of a Lodging establishment generating total Rent during the preceding calendar year of greater than Three Hundred Fifty Thousand Dollars (\$350,000) shall pay as an Assessment a sum equal to two percent (2%) of the Rent charged by the Operator.

(b) Each Operator of a Lodging establishment subject to assessment under this Chapter shall, on or before the last day of the month following each calendar quarter, or at the end of any shorter reporting period that may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by the Tax Collector, of the total rents charged by the Operator and the amount of Assessments owed for such calendar quarter. At the time the return is filed, the full amount of Assessments owed for such calendar quarter shall be remitted to the Tax Collector. Notwithstanding the foregoing, Operators of Lodging establishments subject to assessment under this Chapter located in

Cities that have entered into agreements with the Tax Collector pursuant to Section 33-6 shall report and remit Assessments as required by the applicable Collecting Entity.

(c) The Operator of a Lodging establishment subject to assessment under this Chapter shall be solely responsible for paying all Assessments when due. Notwithstanding the foregoing, in the event that the Operator of a Lodging establishment elects to pass on some or all of the Assessment to Transient customers of the Lodging establishment, the Operator of the Lodging establishment shall separately identify or itemize the Assessment on any document provided to a customer. Assessments levied on the Operators of Lodging establishments pursuant to this Ordinance and passed on to customers are not part of a Lodging establishment Operator's rent, gross receipts, or gross revenues for purposes of this Chapter or Chapter 12 of the Sonoma County Code.

Section 33-6 Collecting Entities; Administrative Fee; Registration.

(a) The Tax Collector may enter into agreements with any City, under which the City shall collect the Assessments levied under this Chapter from Operators of Lodging located within the territory of the City. Such agreements shall be consistent with the provisions of this Chapter. Operators of Lodgings subject to assessment under this Chapter located within the territories of any such City shall file, at such times as the Collecting Entity shall specify, information returns containing, at a minimum, the amount of Rent charged and the amount of Assessments owed for the applicable reporting period, and shall remit to the Collecting Entity the amount of Assessments owed for such reporting period.

(b) Each Collecting Entity (including the Tax Collector) shall be entitled to charge an amount equal to its actual costs of collection and administration, not to exceed two percent (2%), of the Assessments collected from Operators of Lodging establishments to defer the administrative costs incurred by the Collecting Entity for the operation of the Area. Notwithstanding the foregoing, for the first two (2) years of the Area, the two percent (2%) administrative fee shall be charged in full for extraordinary enforcement costs and other related unforeseeable costs. All Assessments collected by any City, less the aforementioned administrative fee, shall be transferred to the Sonoma County Tax Collector within 30 days following collection of the Assessment by the applicable City. The Sonoma County Tax Collector will not charge an administrative fee for Assessments collected by a City if to do so would result in the imposition of a total administrative fee of greater than 2%.

(c) Each Collecting Entity may require each Operator subject to assessment under this Chapter to register with the Collecting Entity and to provide such information as the Collecting Entity deems necessary to enable the Collecting Entity to collect Assessments due under this Chapter.

Section 33-7 Special Fund.

A special fund designated as the "Sonoma County Tourism Business Improvement Area Fund" is hereby created. The Sonoma County Tax Collector shall place all Assessments collected or remitted hereunder into the Fund. The revenue from the levy of Assessments within the Area shall not be used for any purposes other than those set forth in Section 33-4 of this Chapter.

Section 33-8 Deficiencies; Penalties.

(a) Any Operator subject to assessment under this Chapter who fails to remit any assessment imposed by this Chapter within the time required shall pay a penalty of ten (10) percent of the amount of the assessment in addition to the amount of the assessment.

(b) Any Operator subject to assessment under this Chapter who fails to remit any delinquent remittance on or before a period of thirty days following the date upon which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the assessment, in addition to the amount of the assessment and the ten percent penalty first imposed.

(c) If the Sonoma County Tax Collector or applicable Collecting Entity determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the Assessments due shall be added thereto in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) In addition to any penalties imposed hereunder, any Operator who fails to remit any assessment imposed by this Chapter when due shall pay interest at the rate of one-and-one-half percent (1.5%) per month on the unpaid balance of the assessment, including penalties, from the date on which the remittance first became delinquent until paid.

Section 33-9 Determination of Assessment upon Nonpayment

(a) If any Operator subject to assessment under this Chapter shall fail to make any report or remittance of Assessments within the time provided in this Chapter, the applicable Collecting Entity shall proceed in the manner it deems best to obtain facts and information upon which to base its estimate of the assessment due, and shall thereafter determine and assess against the Operator the assessment, penalties, and interest due pursuant to this Chapter. In any case where such determination is made, the Collecting Entity shall give a notice of the amounts so assessed by serving it personally or

depositing it in the United States mail, postage prepaid, addressed to the Operator at its last known place of address.

(b) The Operator may, within ten (10) calendar days after the serving or mailing of such notice, make application in writing to the Collecting Entity for a hearing on the amount assessed. The application is considered made when mailed. If application by the Operator for a hearing is not made within the time prescribed, the Assessments, penalties, and interest, if any, determined by the Collecting Entity to be due shall become final and conclusive and immediately due and payable. If the Operator makes timely application for a hearing, the Collecting Entity shall give not less than ten (10) calendar days' written notice to the Operator as provided herein of the time and date of the hearing. At the hearing, the Operator may appear and offer evidence as to why the amounts specified in the Collecting Entity's determination should not be fixed.

(c) After such hearing, the Collecting Entity shall determine the proper assessment, penalties, and interest to be remitted, and shall thereafter give written notice of same to the Operator, within thirty (30) calendar days of the hearing. The Collecting Entity's determination shall be presumed to be correct. The amount determined to be due shall be payable after fifteen (15) calendar days from the date of mailing of the determination, unless an appeal is taken pursuant to Section 33-10 of this Chapter. At any appeal, the Operator has the burden of proving that the Collecting Entity's determination is incorrect.

Section 33-10 Appeals

Any Operator subject to assessment under this Chapter aggrieved by any decision of the Collecting Entity with respect to the amount of Assessments, penalties, or interest imposed under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk, and a copy on the Tax Collector, within fifteen (15) calendar days of the serving or mailing of the determination by the Collecting Entity. The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk or the Tax Collector shall give notice to the Operator by mailing such notice to the Operator at its last known place of address. The time of the hearing shall be at least 15 calendar days after the mailing of the notice. The Tax Collector shall present the matter to the Board of Supervisors and include evidence submitted by the Operator. The Tax Collector shall also include proposed findings and a resolution of the appeal. At the hearing, the Tax Collector, the Collecting Entity, and the Operator shall have an opportunity to explain their case and introduce other statements or evidence. The Board of Supervisors may impose reasonable time limits on each party's presentation. The findings of the Board of Supervisors shall be final and conclusive, and shall be served on the Operator as provided in Section 33-9 of this Chapter. Any amount found to be due shall be immediately due and payable.

Section 33-11 Assessments Due Deemed Debt to County; Actions to Collect

Any assessment, penalty, or interest required to be paid by any Operator subject to assessment under this Chapter shall be deemed a debt owed by the Operator to the County. Any assessment collected from a Transient by an Operator which has not been paid to the County shall be deemed a debt owed by the Operator to the County. Any Operator owing money to the County for Assessments under this Chapter shall be liable to an action brought in the name of the County for the recovery of the amount of the debt. The County shall be entitled to recover from an Operator found liable for the debt, or any part thereof, any costs, including attorneys' fees, personnel costs, or other expenses incurred by the County because of the failure of the Operator to timely remit Assessments, penalties, or interest to the County.

Section 33-12 Refunds.

If an assessment, penalty, or interest imposed by this Chapter has been overpaid or paid more than once or paid in error, or has been illegally collected or received by the County, a refund may be sought by filing a claim according to the procedure set forth in Chapter 2, Article XXV of this Code.

Section 33-13 Violations.

Any Operator violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punishable therefore as provided in Section 1-7 of this Code. In addition, the Tax Collector may pursue on behalf of the County any civil or administrative remedy otherwise available for failure to comply with the requirements of this Chapter. If the County prevails in such action or proceeding, the County shall be entitled to recover its costs, including attorneys' fees, personnel costs, or other expenses incurred because of the failure to comply with the provisions of this Chapter.

Section 33-14 Records.

Every Operator of a Lodging establishment subject to assessment under this Chapter shall keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the applicable Collecting Entity, which records the applicable Collecting Entity and the County of Sonoma shall have the right to inspect at a reasonable time and following twenty-four (24) hours' prior written notice.

Section 33-15 Advisory Board.

An Advisory Board comprised of five (5) members is hereby created to carry out the functions of an advisory board under the Law. The members of the Advisory Board

may be nominated by and be members of the board of directors of the Contractor, subject to the approval of the Board of Supervisors. Members of the Advisory Board shall serve at the pleasure of the Board of Supervisors and may be removed by the Board of Supervisors at any time. The Advisory Board shall advise the Board of Supervisors on the amount of the Area's Assessments and on the services, programs, and activities to be funded by the Assessments, and shall perform such other duties as required by the Law, including preparing the Annual Report required by Section 36533 of the Law.

Section 33-16 Administration; Sonoma County Tourism Bureau.

(a) The County of Sonoma may contract with a Contractor to carry out the services, activities, and programs to be funded by revenues from Assessments, as set forth in this Chapter and the Law, and as specified in the applicable Annual Report. The Sonoma County Tourism Bureau is hereby designated to act as the initial Contractor. Any contract between the County and the Contractor shall conform to the provisions of this Chapter.

(b) The board of directors of the Contractor shall be comprised of 22 members. Directors shall be appointed by the Board of Supervisors, City Councils and by the lodging industry in proportion to the respective financial contribution to the operation of the Contractor made by the County (from transient occupancy tax receipts or other sources), the Cities (from transient occupancy tax receipts or other sources) and the lodging industry (from Assessments under this Chapter or other sources). The number of directors appointed by Cities shall be based on the collective financial contribution from all Cities. The right to appoint a director shall not vest until pro-rata contributions equal or exceed the amount required to appoint one director. The lodging industry shall appoint as directors operators of lodging establishments from each of the following categories: (i) 25 units or fewer; (ii) 26-75 units; (iii) 76-140 units; (iv) over 140 units. Appointment of directors by the lodging industry shall be made based upon the percentage of Assessments contributed by each lodging type; provided, however, that no less than two nor more than five directors shall be appointed from any one lodging category; and provided further, that no less than two nor more than five directors shall be operators of lodging establishments located within each separate Sonoma County supervisorial district. Directors appointed on behalf of the County or the Cities shall be appointed by the Board of Supervisors or City Councils, as applicable. Such directors may not be members of the appointing bodies, but shall be operators of tourism-related businesses within the Area, or employees or board members of non-profit entities within the Area carrying out activities to promote tourism within Sonoma County. In the event the Contractor changes the composition of the board of directors, the County may immediately terminate the Contractor. Meetings of the board of directors of the Contractor shall be noticed, public, and held in conformance with the provisions of the Ralph M. Brown Act.

(c) The contract with the Contractor shall reasonably specify the services, programs, and activities to be provided by the Contractor, which services, programs, and activities shall be in conformance with the applicable Annual Report. The Contractor may provide any services, programs, or activities that promote tourist visits to the Area, without regard to the limitations set forth in Section 33-4, provided that services, programs, or activities not authorized by Section 33-4 may not be paid for using revenues from Assessments. Prior to contracting with a Contractor, the County shall obtain a budget from the Contractor showing to the satisfaction of the County that the revenues from Assessments and all other sources to be paid to the Contractor are sufficient to permit the Contractor to carry out the services, programs, and activities set forth in the annual plan. The contract with the Contractor shall contain provisions allowing the County to inspect the Contractor's records, to perform audits and investigations, or to obtain reports from the Contractor as the County deems necessary to ensure that revenues from Assessments are used only as set forth in the contract and as permitted under this Chapter and the Law. The contract shall provide that it may be terminated by the County, with or without cause, on no less than thirty (30) days' notice.

(d) The Board of Supervisors may, in its sole discretion, remove the SCTB or successor Contractor at any time. Upon such removal, the Board of Supervisors may either (1) select and contract with a successor Contractor or (2) provide the services, program, and activities set forth in the applicable Annual Report with the County's own forces, in which case, the County may obtain reimbursement for services performed and expenses incurred from revenues from Assessments. The composition of the board of directors of any successor Contractor must be substantially similar to the composition of the board of directors of SCTB as set forth in Subsection 33-16(b) above. If the Board of Supervisors does not select a successor Contractor, the Board shall appoint an Advisory Board, whose members must be Operators of Lodging establishments subject to assessment under this Chapter.

(e) The contract with the Contractor shall be administered on behalf of the County of Sonoma by the Director of the Economic Development Board, who may authorize disbursements from the Sonoma County Tourism Business Improvement Area Fund solely for the purposes set forth in Section 33-4.

Section 33-17 Modification or Disestablishment of the Area.

(a) The Board of Supervisors, by ordinance, may modify the provisions of this Chapter and may disestablish the Area, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the area, and shall state the time and place of a hearing to be held by the Board of Supervisors to consider the proposed action.

(b) If the Operators of Lodging establishments which pay 50 percent or more of the Assessments in the Area file a petition with the Clerk of the Board of Supervisors requesting the Board of Supervisors to adopt a resolution of intention to modify or disestablish the Area, the Board of Supervisors shall adopt such resolution and act upon it as required by Section 33-17(d) below and the Law. Signatures on such petition shall be those of a duly authorized representative of the Operators of Lodging establishments in the Area that paid Assessments in the prior calendar quarter.

(c) In the event the resolution proposes to modify any of the provisions of this Chapter, including changes in the existing Assessments or in the existing boundaries of the Area, such proceedings shall terminate if protest is made by the Operators of Lodging establishments paying 50 percent or more of the Assessments in the Area.

(d) In the event the resolution proposes disestablishment of the Area, the Board of Supervisors shall disestablish the Area; unless at such hearing, protest against disestablishment is made by the Operators of Lodging establishments paying 50 percent or more of the Assessments in the Area.

SECTION III. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this day of , 2004, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

BROWN ___ **KERNS** ___ **SMITH** ___ **REILLY** ___ **KELLEY** ___

AYES ___ **NOES** ___ **ABSTAIN** ___ **ABSENT**

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of Supervisors

ORDINANCE NO. 5525

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, ESTABLISHING THE SONOMA COUNTY TOURISM BUSINESS IMPROVEMENT AREA

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I.

(a) Pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code sections 36500, et seq. (the "Law"), on September 14, 2004, this Board adopted Resolution No. 04-0850, entitled "RESOLUTION OF THE BOARD DECLARING ITS INTENTION TO ESTABLISH A TOURISM BUSINESS IMPROVEMENT AREA IN VARIOUS CITIES OF SONOMA COUNTY AND IN THE UNINCORPORATED AREA OF THE COUNTY OF SONOMA, TO PROVIDE FOR THE LEVYING OF ASSESSMENTS ON SPECIFIED LODGING BUSINESSES CONDUCTED WITHIN SUCH AREA, DESCRIBING THE BOUNDARIES OF THE PROPOSED AREA, THE AUTHORIZED USES TO WHICH THE PROPOSED REVENUES SHALL BE PUT, THE RATE OF SUCH ASSESSMENTS, FIXING OCTOBER 12, 2004 AT 10 A.M. AND NOVEMBER 2, 2004 10:00 A.M. AS THE DATES FOR A PUBLIC MEETING AND A PUBLIC HEARING TO BE HELD BY THE BOARD TO CONSIDER THE ESTABLISHMENT OF SUCH AREA AND THE LEVY OF ASSESSMENTS, AND AUTHORIZING AND DIRECTING THE GIVING OF NOTICE," declaring its intention to form a business improvement area within the boundaries of the County of Sonoma, to be known as the "Sonoma County Tourism Business Improvement Area," providing for the levy of an assessment and charge to be imposed therein, fixing the times and places for a public meeting and a public hearing, and giving notice of the meeting and hearing.

(b) Resolution No. 04-0850 was duly published, and copies thereof were mailed, as provided by the Law.

(c) As specified in Resolution No. 04-0850, a public meeting pursuant to Government Code section 54954.6 concerning the formation of the area and the levy of assessments was held on October 12, 2004 at 10:00 a.m. before this Board in the Board's chambers at 575 Administration Drive, Santa Rosa.

(d) On October 12, 2004, the Board adopted its Resolution No. 04-0984, entitled "READOPTED RESOLUTION OF THE BOARD DECLARING ITS INTENTION TO ESTABLISH A TOURISM BUSINESS IMPROVEMENT AREA IN

VARIOUS CITIES OF SONOMA COUNTY AND IN THE UNINCORPORATED AREA OF THE COUNTY OF SONOMA, TO PROVIDE FOR THE LEVYING OF ASSESSMENTS ON SPECIFIED LODGING BUSINESSES CONDUCTED WITHIN SUCH AREA, DESCRIBING THE BOUNDARIES OF THE PROPOSED AREA, THE AUTHORIZED USES TO WHICH THE PROPOSED REVENUES SHALL BE PUT, THE RATE OF SUCH ASSESSMENTS, FIXING NOVEMBER 2, 2004 10:00 A.M. AS THE DATE FOR A PUBLIC HEARING TO BE HELD BY THE BOARD TO CONSIDER THE ESTABLISHMENT OF SUCH AREA AND THE LEVY OF ASSESSMENTS, AND AUTHORIZING AND DIRECTING THE GIVING OF NOTICE.”

(e) Copies of Resolution No. 04-0984 were mailed as provided by law. Pursuant to Resolution Nos. 04-0850 and 04-0984, a public hearing concerning the formation of the area and the levy of assessments was held on before this Board in its Chambers on November 2, 2004 at 10:00 a.m.

(f) At the public hearing on November 2, 2004, all protests, both written and oral, made or filed, were considered and duly overruled and denied, and this Board determined that there was no majority protest to the formation of the Area within the meaning of Section 36523 of the Law.

(g) Pursuant to Section 36521.5 of the Law, the County of Sonoma may not form a business improvement area within the territorial jurisdiction of a city without the consent of the city council of that city. The Board has received resolutions providing such consent from each of the following: the Cities of Santa Rosa, Rohnert Park, Petaluma, Cloverdale, Cotati, and Sebastopol, and the Town of Windsor.

(h) With respect to Government Code section 87103 and Section 18707.4 of Title 2, Division 6 of the California Code of Regulations, the Board finds and declares (i) that the persons appointed to the Advisory Board created by this Ordinance and to the Board of Directors of the Contractor contemplated by this Ordinance are appointed to represent and further the economic interest of lodging owners and other businesses that rely upon tourist visits to Sonoma County, (ii) that these members are required to have this economic interest, (iii) that decisions made by the Advisory Board or the Board of Directors of the Contractor will not have a reasonably foreseeable financial effect on any other economic interest held by the members, other than the economic interest they are appointed to represent, and (iv) the decisions of the Advisory Board or the Board of Directors of the Contractor will financially effect the member’s economic interest in a manner that is substantially the same or proportionally the same as the decision will financially effect a significant portion of the persons the member was appointed to represent.

SECTION II.

Chapter 33, pertaining to the creation of the Sonoma County Tourism Business Improvement Area, is added to the Sonoma County Code to read as follows:

CHAPTER 33. SONOMA COUNTY TOURISM BUSINESS IMPROVEMENT AREA

Section 33-1 Authority.

This chapter is adopted pursuant to the "Parking and Business Improvement Area Law of 1989," Sections 36500 et seq. of the California Streets and Highways Code, and Resolution Nos. 04-0850 and 04-0984, adopted by the Board of Supervisors on September 14, 2004, and October 12, 2004. Such resolutions were published and mailed as provided by law, and meetings and hearings thereon were held by the Board at public meetings and hearings on October 12, 2004, and November 2, 2004, at which time all persons desiring to be heard, and all objections or protests made or filed, were fully heard and considered. The Board duly concluded the hearing on November 2, 2004, and determined that protests objecting to the formation of the Area had not been received from the owners of lodging businesses in the proposed Area which would pay 50 percent or more of the Assessments proposed to be levied. The Board of Supervisors finds that the Assessments levied on owners of lodging businesses pursuant to this Chapter are based upon the estimated benefit to the owners of assessed lodging businesses within the Area, and that all owners of lodging businesses in the Area against whom Assessments are proposed to be levied will be benefited by the expenditure of funds raised by the Assessments.

Section 33-2 Definitions.

Except where the context otherwise requires, as used in this Chapter:

"Administrative Fee" means a fee equal to the actual costs of collection and administration, not to exceed two percent (2%) of the amount of Assessments collected, which a Collecting Entity is entitled to retain from the Assessments collected within their respective territorial jurisdictions.

"Advisory Board" means the advisory board appointed by the Board of Supervisors pursuant to this Chapter.

"Annual Report" means the annual report required by Section 36533 of the Law.

"Area" means the Sonoma County Tourism Business Improvement Area created by this Chapter and as delineated in Section 33-3.

“Assessment” means the levy imposed by this Chapter for the purpose of funding activities and programs promoting tourism in the Area.

“Board of Supervisors” means the Board of Supervisors of the County of Sonoma.

“City” or “Cities” shall mean, individually or collectively, as the context may require, the various Cities or Towns of Sonoma County, excluding those Cities and Towns that have not consented to the imposition of Assessments within their territorial jurisdiction.

“City Council” means a city council of a City.

“Collecting Entity” means (1) for Lodging establishments located within the territorial jurisdiction of a City that has entered into an administrative agreement with the County pursuant to Section 33-6, the City in which the Lodging establishment is located; and (2) for all other Lodging establishments, the Sonoma County Tax Collector.

“Contractor” means a non-profit or for-profit entity with which the County of Sonoma contracts to carry out the services, activities, and programs to be funded by revenues from Assessments.

“County” means the County of Sonoma.

“Lodging” means any accommodation consisting of one (1) or more rooms or other living spaces which are occupied or intended or designed for occupancy by Transients for dwelling, lodging, or sleeping purposes. Such term includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, recreational vehicle park, or public or private campground. The term “Lodging” does not include an organized camp, as that term is defined in Section 18897 of the Health and Safety Code, or any establishment operated by a public or non-profit entity exclusively for the purpose of providing temporary shelter for the homeless.

“Marketing Activities” means activities designed to market the Area as a tourist destination, including the expenditure of funds to place advertising in any media, conduct public relations campaigns, perform marketing research, promote conventions and trade shows, and foster improved contacts within the travel industry, for the purpose of promoting tourism within the Area.

“Occupancy” means the use or possession, or the right to the use or possession, of any one or more rooms or portion thereof, or other living space, in any Lodging for dwelling, lodging, or sleeping purposes.

“Operator” means the person who is the owner of a Lodging business, whether in the capacity of an owner, lessee, sublessee, mortgagee in possession, or licensee of the real property upon which the Lodging business is located, or other capacity. When the Operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an Operator for the purposes of this article, and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered compliance by both. For purposes of the imposition of Assessments pursuant to Section 33-5, (a) the term “Operator of a Lodging establishment” shall include persons or entities who manage the rental of individual residential units to Transients, even if such units are not owned by such Operator, and (b) whether such Operator generated Rent of more than \$350,000 in the prior fiscal year shall be determined by the aggregate total of Rent received from all individual residential units managed by such Operator during such fiscal year.

“Parking and Business Improvement Area Law of 1989” or “Law” means the provisions of California Streets and Highways Code Sections 36500 to 36551, as they now exist or are hereafter amended. Businesses in the Area shall be subject to any amendments to the Law.

“Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, or any public agency.

“Rent” means the consideration charged, whether or not received, for the occupancy of a space in a Lodging valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without deduction therefrom whatsoever.

“Room or other living space” means a room or any portion of any room in any Lodging; any tent cabin or any space designated for location of a mobile home or house trailer, tent trailer, recreational vehicle, tent, or other movable living space.

“Sonoma County Tourism Bureau” or “SCTB” means the Sonoma County Tourism Bureau, Inc., a California nonprofit mutual benefit corporation.

“Sonoma County Tourism Business Improvement Area” means that area created by this Chapter as a business improvement area pursuant to the Parking and Business Improvement Area Law of 1989.

“Sonoma County Tourism Business Improvement Area Fund” or “Fund” means the fund created pursuant to Section 33-7 of this Chapter.

“Tax Collector” means the Sonoma County Tax Collector.

“Transient” means any person who exercises occupancy or who is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a Lodging shall be deemed to be a Transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

Section 33-3 Area Established – Description.

Pursuant to the Parking and Business Improvement Area Law of 1989, a parking and business improvement area is hereby established, to be known as the “Sonoma County Tourism Business Improvement Area.” The boundaries of the Area are the same as the boundaries of the County of Sonoma, but the Area does not include the territory of any incorporated city in Sonoma County that has not consented to the formation of the Area within its territorial jurisdiction.

Section 33-4 Authorized Uses.

The purpose of forming the Area as a business improvement area under the Law is to provide revenue to defray the costs of services, activities, and programs that promote and encourage tourism within the Area, which will benefit the Operators of Lodging establishments paying Assessments in the Area through the promotion of the scenic, recreational, cultural, and other attractions in the Area. Revenues from Assessments shall be used to conduct Marketing Activities designed to increase overnight visits to the Area. Revenues from Assessments may be used for programs, services, and activities outside the Area, if such programs, services, and activities are designed to promote and encourage overnight visits to the Area. Revenues from Assessments may also be used to pay or reimburse administrative costs incurred by the Contractor or County of Sonoma in connection with the creation of the Area and the Sonoma County Tourism Bureau, the transition of the current County-operated tourism marketing program to the Contractor, and the ongoing administrative costs associated with the Marketing Activities. Administrative costs paid or reimbursed pursuant to this Section 33-4 shall not be subject to the limit set forth in Section 33-6; provided, however, that the County’s reimbursement for Assessment collection costs is limited as provided in Section 33-6. Revenues from Assessments collected in the Area may not be used for any purposes other than those set forth above.

Section 33-5 Imposition and Collection of Assessments.

(a) Each Operator of a Lodging establishment generating total Rent during the preceding fiscal year (July 1 to June 30) of greater than Three Hundred Fifty Thousand Dollars (\$350,000) shall pay as an Assessment a sum equal to two percent (2%) of the Rent charged by the Operator.

(b) Each Operator of a Lodging establishment subject to assessment under this Chapter shall, on or before the last day of the month following each calendar quarter, or at the end of any shorter reporting period that may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by the Tax Collector, of the total rents charged by the Operator and the amount of Assessments owed for such calendar quarter. At the time the return is filed, the full amount of Assessments owed for such calendar quarter shall be remitted to the Tax Collector. Notwithstanding the foregoing, Operators of Lodging establishments subject to assessment under this Chapter located in Cities that have entered into agreements with the Tax Collector pursuant to Section 33-6 shall report and remit Assessments as required by the applicable Collecting Entity.

(c) The Operator of a Lodging establishment subject to assessment under this Chapter shall be solely responsible for paying all Assessments when due. Notwithstanding the foregoing, in the event that the Operator of a Lodging establishment elects to pass on some or all of the Assessment to Transient customers of the Lodging establishment, the Operator of the Lodging establishment shall separately identify or itemize the Assessment on any document provided to a customer. Assessments levied on the Operators of Lodging establishments pursuant to this Ordinance and passed on to customers are not part of a Lodging establishment Operator's rent, gross receipts, or gross revenues for purposes of this Chapter or Chapter 12 of the Sonoma County Code.

Section 33-6 Collecting Entities; Administrative Fee; Registration.

(a) The Tax Collector may enter into agreements with any City, under which the City shall collect the Assessments levied under this Chapter from Operators of Lodging located within the territory of the City. Such agreements shall be consistent with the provisions of this Chapter. Operators of Lodgings subject to assessment under this Chapter located within the territories of any such City shall file, at such times as the Collecting Entity shall specify, information returns containing, at a minimum, the amount of Rent charged and the amount of Assessments owed for the applicable reporting period, and shall remit to the Collecting Entity the amount of Assessments owed for such reporting period.

(b) Each Collecting Entity (including the Tax Collector) shall be entitled to charge an amount equal to its actual costs of collection and administration, not to exceed two percent (2%), of the Assessments collected from Operators of Lodging

establishments to defer the administrative costs incurred by the Collecting Entity for the operation of the Area. Notwithstanding the foregoing, for the first two (2) years of the Area, the two percent (2%) administrative fee shall be charged in full for extraordinary enforcement costs and other related unforeseeable costs. All Assessments collected by any City, less the aforementioned administrative fee, shall be transferred to the Sonoma County Tax Collector within 30 days following collection of the Assessment by the applicable City. The Sonoma County Tax Collector will not charge an administrative fee for Assessments collected by a City if to do so would result in the imposition of a total administrative fee of greater than 2%.

(c) Each Collecting Entity may require each Operator subject to assessment under this Chapter to register with the Collecting Entity and to provide such information as the Collecting Entity deems necessary to enable the Collecting Entity to collect Assessments due under this Chapter.

Section 33-7 Special Fund.

A special fund designated as the "Sonoma County Tourism Business Improvement Area Fund" is hereby created. The Sonoma County Tax Collector shall place all Assessments collected or remitted hereunder into the Fund. The revenue from the levy of Assessments within the Area shall not be used for any purposes other than those set forth in Section 33-4 of this Chapter.

Section 33-8 Deficiencies; Penalties.

(a) Any Operator subject to assessment under this Chapter who fails to remit any assessment imposed by this Chapter within the time required shall pay a penalty of ten (10) percent of the amount of the assessment in addition to the amount of the assessment.

(b) Any Operator subject to assessment under this Chapter who fails to remit any delinquent remittance on or before a period of thirty days following the date upon which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the assessment, in addition to the amount of the assessment and the ten percent penalty first imposed.

(c) If the Sonoma County Tax Collector or applicable Collecting Entity determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the Assessments due shall be added thereto, in addition to the penalties set forth in subsections (a) and (b) of this section.

(d) In addition to any penalties imposed hereunder, any Operator who fails to remit any assessment imposed by this Chapter when due shall pay interest at the rate of one-and-one-half percent (1.5%) per month on the unpaid balance of the assessment, from the date on which the assessment first became delinquent until paid.

Section 33-9 Determination of Assessment upon Nonpayment

(a) If any Operator subject to assessment under this Chapter shall fail to make any report or remittance of Assessments within the time provided in this Chapter, the applicable Collecting Entity shall proceed in the manner it deems best to obtain facts and information upon which to base its estimate of the assessment due, and shall thereafter determine and assess against the Operator the assessment, penalties, and interest due pursuant to this Chapter. In any case where such determination is made, the Collecting Entity shall give a notice of the amounts so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the Operator at its last known place of address.

(b) The Operator may, within ten (10) calendar days after the serving or mailing of such notice, make application in writing to the Collecting Entity for a hearing on the amount assessed. The application is considered made when mailed. If application by the Operator for a hearing is not made within the time prescribed, the Assessments, penalties, and interest, if any, determined by the Collecting Entity to be due shall become final and conclusive and immediately due and payable. If the Operator makes timely application for a hearing, the Collecting Entity shall give not less than ten (10) calendar days' written notice to the Operator as provided herein of the time and date of the hearing. At the hearing, the Operator may appear and offer evidence as to why the amounts specified in the Collecting Entity's determination should not be fixed.

(c) After such hearing, the Collecting Entity shall determine the proper assessment, penalties, and interest to be remitted, and shall thereafter give written notice of same to the Operator, within thirty (30) calendar days of the hearing. The Collecting Entity's determination shall be presumed to be correct. The amount determined to be due shall be payable after fifteen (15) calendar days from the date of mailing of the determination, unless an appeal is taken pursuant to Section 33-10 of this Chapter. At any appeal, the Operator has the burden of proving that the Collecting Entity's determination is incorrect.

Section 33-10 Appeals

Any Operator subject to assessment under this Chapter aggrieved by any decision of the Collecting Entity with respect to the amount of Assessments, penalties, or interest imposed under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk, and a copy on the Tax Collector, within fifteen (15)

calendar days of the serving or mailing of the determination by the Collecting Entity. The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk or the Tax Collector shall give notice to the Operator by mailing such notice to the Operator at its last known place of address. The time of the hearing shall be at least 15 calendar days after the mailing of the notice. The Tax Collector shall present the matter to the Board of Supervisors and include evidence submitted by the Operator. The Tax Collector shall also include proposed findings and a resolution of the appeal. At the hearing, the Tax Collector, the Collecting Entity, and the Operator shall have an opportunity to explain their case and introduce other statements or evidence. The Board of Supervisors may impose reasonable time limits on each party's presentation. The findings of the Board of Supervisors shall be final and conclusive, and shall be served on the Operator as provided in Section 33-9 of this Chapter. Any amount found to be due shall be immediately due and payable.

Section 33-11 Assessments Due Deemed Debt to County; Actions to Collect

Any assessment, penalty, or interest required to be paid by any Operator subject to assessment under this Chapter shall be deemed a debt owed by the Operator to the County. Any assessment collected from a Transient by an Operator which has not been paid to the County shall be deemed a debt owed by the Operator to the County. Any Operator owing money to the County for Assessments under this Chapter shall be liable to an action brought in the name of the County for the recovery of the amount of the debt. The County shall be entitled to recover from an Operator found liable for the debt, or any part thereof, any costs, including attorneys' fees, personnel costs, or other expenses incurred by the County because of the failure of the Operator to timely remit Assessments, penalties, or interest to the County.

Section 33-12 Refunds.

If an assessment, penalty, or interest imposed by this Chapter has been overpaid or paid more than once or paid in error, or has been illegally collected or received by the County, a refund may be sought by filing a claim according to the procedure set forth in Chapter 2, Article XXV of this Code.

Section 33-13 Violations.

Any Operator violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punishable therefore as provided in Section 1-7 of this Code. In addition, the Tax Collector may pursue on behalf of the County any civil or administrative remedy otherwise available for failure to comply with the requirements of this Chapter. If the County prevails in such action or proceeding, the County shall be entitled to recover its costs, including attorneys' fees, personnel costs, or other expenses incurred because of the failure to comply with the provisions of this Chapter.

Section 33-14 Records.

Every Operator of a Lodging establishment subject to assessment under this Chapter shall keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the applicable Collecting Entity, which records the applicable Collecting Entity and the County of Sonoma shall have the right to inspect at a reasonable time and following twenty-four (24) hours' prior written notice.

Section 33-15 Advisory Board.

An Advisory Board comprised of five (5) members is hereby created to carry out the functions of an advisory board under the Law. The members of the Advisory Board may be nominated by and be members of the board of directors of the Contractor, subject to the approval of the Board of Supervisors. Members of the Advisory Board shall serve at the pleasure of the Board of Supervisors and may be removed by the Board of Supervisors at any time. The Advisory Board shall advise the Board of Supervisors on the amount of the Area's Assessments and on the services, programs, and activities to be funded by the Assessments, and shall perform such other duties as required by the Law, including preparing the Annual Report required by Section 36533 of the Law.

Section 33-16 Administration; Sonoma County Tourism Bureau.

(a) The County of Sonoma may contract with a Contractor to carry out the services, activities, and programs to be funded by revenues from Assessments, as set forth in this Chapter and the Law, and as specified in the applicable Annual Report. The Sonoma County Tourism Bureau is hereby designated to act as the initial Contractor. Any contract between the County and the Contractor shall conform to the provisions of this Chapter.

(b) The board of directors of the Contractor shall be comprised of 22 members. Directors shall be appointed by the Board of Supervisors, City Councils and by the lodging industry in proportion to the respective financial contribution to the operation of the Contractor made by the County (from transient occupancy tax receipts or other sources), the Cities (from transient occupancy tax receipts or other sources) and the lodging industry (from Assessments under this Chapter or other sources). The number of directors appointed by Cities shall be based on the collective financial contribution from all Cities. The right to appoint a director shall not vest until pro-rata contributions equal or exceed the amount required to appoint one director. The lodging industry shall appoint as directors operators of lodging establishments from each of the following categories: (i) 25 units or fewer; (ii) 26-75 units; (iii) 76-140 units; (iv) over 140 units. Appointment of directors by the lodging industry shall be made based upon the percentage of

Assessments contributed by each lodging type; provided, however, that no less than two nor more than five directors shall be appointed from any one lodging category; and provided further, that no less than two nor more than five directors shall be operators of lodging establishments located within each separate Sonoma County supervisorial district. Directors appointed on behalf of the County or the Cities shall be appointed by the Board of Supervisors or City Councils, as applicable. Such directors may not be members of the appointing bodies, but shall be operators of tourism-related businesses within the Area, or employees or board members of non-profit entities within the Area carrying out activities to promote tourism within Sonoma County. In the event the Contractor changes the composition of the board of directors, the County may immediately terminate the Contractor. Meetings of the board of directors of the Contractor shall be noticed, public, and held in conformance with the provisions of the Ralph M. Brown Act.

(c) The contract with the Contractor shall reasonably specify the services, programs, and activities to be provided by the Contractor, which services, programs, and activities shall be in conformance with the applicable Annual Report. The Contractor may provide any services, programs, or activities that promote tourist visits to the Area, without regard to the limitations set forth in Section 33-4, provided that services, programs, or activities not authorized by Section 33-4 may not be paid for using revenues from Assessments. Prior to contracting with a Contractor, the County shall obtain a budget from the Contractor showing to the satisfaction of the County that the revenues from Assessments and all other sources to be paid to the Contractor are sufficient to permit the Contractor to carry out the services, programs, and activities set forth in the annual plan. The contract with the Contractor shall contain provisions allowing the County to inspect the Contractor's records, to perform audits and investigations, or to obtain reports from the Contractor as the County deems necessary to ensure that revenues from Assessments are used only as set forth in the contract and as permitted under this Chapter and the Law. The contract shall provide that it may be terminated by the County, with or without cause, on no less than thirty (30) days' notice.

(d) The Board of Supervisors may, in its sole discretion, remove the SCTB or successor Contractor at any time. Upon such removal, the Board of Supervisors may either (1) select and contract with a successor Contractor or (2) provide the services, program, and activities set forth in the applicable Annual Report with the County's own forces, in which case, the County may obtain reimbursement for services performed and expenses incurred from revenues from Assessments. The composition of the board of directors of any successor Contractor must be substantially similar to the composition of the board of directors of SCTB as set forth in Subsection 33-16(b) above. If the Board of Supervisors does not select a successor Contractor, the Board shall appoint an Advisory Board, whose members must be Operators of Lodging establishments subject to assessment under this Chapter.

(e) The contract with the Contractor shall be administered on behalf of the County of Sonoma by the Director of the Economic Development Board, who may authorize disbursements from the Sonoma County Tourism Business Improvement Area Fund solely for the purposes set forth in Section 33-4.

Section 33-17 Modification or Disestablishment of the Area.

(a) The Board of Supervisors, by ordinance, may modify the provisions of this Chapter and may disestablish the Area, after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the area, and shall state the time and place of a hearing to be held by the Board of Supervisors to consider the proposed action.

(b) If the Operators of Lodging establishments which pay 50 percent or more of the Assessments in the Area file a petition with the Clerk of the Board of Supervisors requesting the Board of Supervisors to adopt a resolution of intention to modify or disestablish the Area, the Board of Supervisors shall adopt such resolution and act upon it as required by Section 33-17(d) below and the Law. Signatures on such petition shall be those of a duly authorized representative of the Operators of Lodging establishments in the Area that paid Assessments in the prior calendar quarter.

(c) In the event the resolution proposes to modify any of the provisions of this Chapter, including changes in the existing Assessments or in the existing boundaries of the Area, such proceedings shall terminate if protest is made by the Operators of Lodging establishments paying 50 percent or more of the Assessments in the Area.

(d) In the event the resolution proposes disestablishment of the Area, the Board of Supervisors shall disestablish the Area; unless at such hearing, protest against disestablishment is made by the Operators of Lodging establishments paying 50 percent or more of the Assessments in the Area.

SECTION III. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this 2nd day of November, 2004, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

BROWN____ **KERNS**____ **SMITH**____ **KELLEY**____ **REILLY**____

AYES ____ **NOES** ____ **ABSTAIN** ____ **ABSENT**____

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of Supervisors

**ADMINISTRATIVE AGREEMENT FOR COLLECTION
OF ASSESSMENTS FOR
SONOMA COUNTY TOURISM BUSINESS IMPROVEMENT AREA**

This Agreement for Collection of Assessments (“Agreement”), dated for convenience _____, is made between the City of Santa Rosa (“City”) and the County of Sonoma (“County”).

RECITALS

A. Pursuant to Sonoma County Code Chapter 33 (“the BIA Ordinance”), the County has formed a Business Improvement Area (“BIA”) pursuant to the Parking and Business Improvement Area Law of 1989 for the promotion of tourism in Sonoma County. Pursuant to the BIA Ordinance, a levy of two percent (2%) of rent charged by lodging operators is assessed (“the BIA assessments”) on lodging operators generating total gross rent greater than \$350,000 in the preceding fiscal year (July 01 to June 30). The City has consented to the formation of the BIA and to the collection of BIA assessments from lodging operators located within the City.

B. The BIA Ordinance contemplates that the collection of BIA assessments from lodging operators within the City may be performed by the City pursuant to an administrative agreement with the County. The BIA Ordinance permits the City to retain from BIA assessments the City’s actual costs of collection and administration, not to exceed two percent (2%) of the BIA assessments collected.

C. City has agreed to collect BIA assessments from lodging operators within its incorporated area, and City and County desire to memorialize the collection and administrative functions to be performed by the City as contemplated by the BIA Ordinance.

D. City and County have agreed to cooperate to obtain additional access to information from the Sonoma County Tourism Bureau regarding evidence of benefit to City and County lodging operators from BIA assessments.

WHEREFORE, the City and County agree as follows:

AGREEMENT

1. Collection of BIA Assessments. Pursuant to and in conformance with the terms of the BIA Ordinance, City shall collect BIA assessments from lodging operators within the incorporated area of the City.

2. Frequency of Collection. City shall collect BIA assessments from lodging operators on a quarterly basis, no later than the last day of the month following the end of a calendar quarter. City may collect BIA assessments in conjunction with City's collection of any transient occupancy tax ("TOT") imposed by City on lodging operators.

3. Registration. City shall require each lodging operator within its incorporated area to provide such information as City shall deem necessary to collect BIA assessments. Information previously provided by a lodging operator to a City in connection with TOT collections may be used by the City for this purpose.

4. Remittance and Reporting to County. City shall remit BIA assessments collected from lodging operators in the most recent calendar quarter, less any administrative fee permitted by the BIA Ordinance and this Agreement, to the Sonoma County Tax Collector within 30 business days of the last day of the month following the end of each calendar quarter. City's remittance of fees shall be accompanied by a report showing the aggregate total of gross room receipts for the quarter, the total amount of exemptions claimed, the aggregate total of BIA assessments collected, the amount of administrative fee withheld by the City, and the total net BIA assessment remitted to the Sonoma County Tax Collector by the City.

5. Delinquent Remittance to County. If payment is not received by the County from the City on or before the 30th business day of the last day of the month following the end of each calendar quarter, the City will be held liable for a 10% penalty. Said penalty will be calculated on the amount of BIA assessment received from lodging operators, less any administrative fee permitted by the BIA ordinance and this Agreement. Notwithstanding the foregoing, City will not be liable for a delinquent remittance penalty for the quarters of April-June 2016, July-September 2016, October-December 2016, and January-March 2017.

6. Delinquency and Collection. If a lodging operator fails to report and remit BIA assessments when due, City shall assess and determine delinquencies, penalties, and interest, and take such actions as are necessary with respect to the assessment and determination of delinquencies, penalties, and interest as are required and provided in sections 33-8 and 33-9 of the BIA Ordinance.

7. Cooperation with County. In the event a lodging operator appeals any assessment by the City pursuant to section 33-10 of the BIA Ordinance, or in the event the County institutes legal action to collect any delinquent assessments, penalties, or interest owed by a lodging operator within the City pursuant to section 33-11 of the BIA Ordinance, the City shall cooperate with the County in connection with such proceedings by providing documentation and witnesses reasonably necessary to the conduct of such proceedings.

8. Records and Inspection. City shall retain all records relating to its collection of BIA assessments and its performance under this Agreement for a period of three years, and shall allow County to inspect and copy such records upon County's reasonable request. If City performs an audit of any lodging operator to determine whether the lodging operator has complied with the City's TOT ordinance or the BIA Ordinance, City shall provide a copy of such audit to County upon request. Nothing in this Agreement shall prohibit the County from conducting an independent audit of lodging operators within the City for the purpose of determining compliance with the BIA Ordinance. County shall provide a copy of such audit to City upon request.

9. Documentation of Eligibility for Exemption. The determination of eligibility for inclusion in the BIA is calculated on a fiscal year basis and liability for payment of the BIA begins in the fiscal year immediately following the close of the prior fiscal year. By August of each year, City shall provide County with a list of all lodging operators within the City's incorporated area and the rent collected by each lodging operator during the prior fiscal year, for the purpose of determining whether each lodging operator is subject to assessment under section 33-5(a) of the BIA Ordinance. The amount

to be used to determine eligibility is the amount of rent actually collected in the previous fiscal year, not when TOT was received by the City.

10. Compensation. City may deduct from BIA assessments remitted to County under this Agreement the City's actual costs of collecting BIA assessments and administering this Agreement, up to a maximum of two percent (2%) of the BIA assessments collected by the City. Notwithstanding the foregoing, for the first two years the BIA exists, the City may deduct two percent (2%) of BIA assessments collected.

11. Term; Termination. The term of this Agreement shall commence on July 1, 2015, and shall continue until June 30, 2017. Notwithstanding the foregoing, this Agreement shall automatically renew for two (2) additional one (1) year terms, expiring no later than June 30, 2019, unless City or County notifies the other party of its intent to terminate the Agreement at the end of the fiscal year. Such notice must be given no later than sixty (60) days before the end of the fiscal year for termination to be effective. This Agreement shall also terminate 90 days after (a) the effective date of any modification to the BIA that excludes the City from the boundaries of the BIA or (b) the effective date of any disestablishment of the BIA pursuant to section 33-17 of the BIA Ordinance.

12. Amendments. This agreement may be amended by the City and the County in writing, signed by both the City and the County.

13. Notices and Payments

All notices and payments to the parties shall be addressed as follows:

City: Finance Director
City of Santa Rosa
90 Santa Rosa Avenue
Santa Rosa, CA 95404

And CC to

Economic Development Manager
City of Santa Rosa
100 Santa Rosa Avenue
Santa Rosa, CA 95404

County: Treasurer-Tax Collector
County of Sonoma
Post Office Box 3879
Santa Rosa, CA 95402

City of Santa Rosa

By _____
Sean McGlynn, City Manager

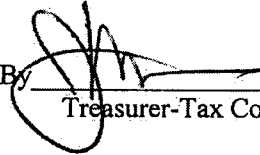
Date _____

Approved as to form:

By _____
City Attorney

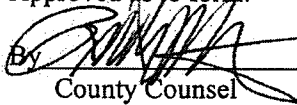
Date _____

County of Sonoma

By  _____
Treasurer-Tax Collector

Date 2/3/17

Approved as to form:

By  _____
County Counsel

Date 2 February 2017