

ORDINANCE NO. 3946

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA, ESTABLISHING THE SANTA ROSA TOURISM BUSINESS IMPROVEMENT AREA

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1.

(a) Pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code Sections 36500, et seq. (Law), May 25, 2010, this Council adopted Resolution No. 27641 entitled "RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA DECLARING ITS INTENTION TO ESTABLISH A TOURISM BUSINESS IMPROVEMENT AREA IN THE CITY OF SANTA ROSA, 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 JULY 13, 2010 AT 4:00 P.M. AND JULY 20, 2010 AT 5:00 P.M. AS THE DATES FOR A PUBLIC MEETING AND A PUBLIC HEARING TO BE HELD BY THE COUNCIL 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 City of Santa Rosa, to be known as the "Santa Rosa 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. 27641 was duly published, and copies thereof were mailed as provided by the Law.

(c) As specified in Resolution No. 27641 a public meeting pursuant to Government Code Section 54954.6 concerning the formation of the area and the levy of assessments was held on July 20, 2010, before this Council in the Council Chamber at 100 Santa Rosa, Santa Rosa.

(d) As specified in Resolution No. 27641 a public hearing pursuant to Government Code Section 54954.6 concerning the formation of the area and the levy of assessments was held on July 27, 2010, before this Council in the Council Chamber at 100 Santa Rosa, Santa Rosa.

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

(f) With respect to Government Code Section 87103 and Section 18707.4 of Title 2, Division 6 of the California Code of Regulations, the Council finds and declares (i) that the persons serving on the Advisory Board designated by this Ordinance are appointed to represent and further the economic interest of lodging owners and other businesses that rely upon tourist

visits to the City of Santa Rosa, (ii) that these members are required to have this economic interest, (iii) that decisions made by the Advisory Board 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 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 2. Chapter 6-56 Article IV, pertaining to the creation of the Santa Rosa Tourism Business Improvement Area, is added to the Santa Rosa City Code to read as follows:

**“CHAPTER 6-56 Article IV.
SANTA ROSA TOURISM BUSINESS IMPROVEMENT AREA**

6-56.260 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. 27641 adopted by the Council on June 8, 2010. Such resolution was published and mailed as provided by law, and public meetings and hearings thereon were held by the Council on July 20, 2010, and July 27, 2010, at which time all persons desiring to be heard, and all objections or protests made or filed, were fully heard and considered. The Council duly concluded the hearing on July 27, 2010, 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 Council 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.

6-56.270 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 the Tax Collector is entitled to retain from the Assessments collected.

“Advisory Board” means the advisory board designated by the City Council pursuant to this Chapter.

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

“Area” means the Santa Rosa Tourism Business Improvement Area created by this Chapter and as delineated in 6-56.280.

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

“City” shall mean the City of Santa Rosa.

“Council” means the Santa Rosa City Council.

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

“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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. 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 6-56.300, 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.

“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.

“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.

“Santa Rosa 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.

“Santa Rosa Tourism Business Improvement Area Fund” or “Fund” means the fund created pursuant to 6-56.320 of this Chapter.

“Tax Collector” means the Tax Collector of the City.

“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. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

6-56.280 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 “Santa Rosa Tourism Business Improvement Area.” The boundaries of the Area are the same as the boundaries of the City.

6-56.290 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 also be used for programs, services, and activities inside or 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 the City in connection with the creation of the Area and the ongoing administrative costs associated with the Marketing Activities. Administrative costs paid or

reimbursed pursuant to this 6-56-4.290 shall not be subject to the limit set forth in 6-56.310; provided, however, that the City's reimbursement for Assessment collection costs is limited as provided in 6-56.310. Revenues from Assessments collected in the Area may not be used for any purposes other than those set forth above.

6-56.300 Imposition and Collection of Assessments.

(a) Each Operator of a Lodging establishment shall pay as an Assessment a sum equal to three percent (3%) 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.

(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 3-28 of the City Code.

6-56.310 Administrative Fee; Registration.

(a) 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 defray the administrative costs incurred by the Tax Collector.

(b) The Tax Collector may require each Operator subject to assessment under this Chapter to register with the Tax Collector and to provide such information as the Tax Collector deems necessary to enable the Tax Collector to collect Assessments due under this Chapter.

6-56.320 Special Fund.

A special fund designated as the "Santa Rosa Tourism Business Improvement Area Fund" is hereby created. The 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 6-56.290 of this Chapter.

6-56.330 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 Tax Collector 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.

6-56.340 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 Tax Collector 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 Tax Collector 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 Tax Collector 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 Tax Collector to be due shall become final and conclusive and immediately due and payable. If the Operator makes timely application for a hearing, the Tax Collector 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 Tax Collector's determination should not be fixed.

(c) After such hearing, the Tax Collector 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 Tax Collector'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 6-56.350 of this Chapter. At any appeal, the Operator has the burden of proving that the Tax Collector's determination is incorrect.

6-56.350 Appeals

Any Operator subject to assessment under this Chapter aggrieved by any decision of the Tax Collector with respect to the amount of Assessments, penalties, or interest imposed under this Chapter may appeal to the Council by filing a notice of appeal with the City Clerk, and a copy on the Tax Collector, within fifteen (15) calendar days of the serving or mailing of the determination by the Tax Collector. The Council shall fix a time and place for hearing such appeal, and the City 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 Council 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 and the Operator shall have an opportunity to explain their case and introduce other statements or evidence. The Council may impose reasonable time limits on each party's presentation. The findings of the Council shall be final and conclusive, and shall be served on the Operator as provided in 6-56.340 of this Chapter. Any amount found to be due shall be immediately due and payable.

6-56.360 Assessments Due Deemed Debt to City; 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 City. Any assessment collected from a Transient by an Operator which has not been paid to the City shall be deemed a debt owed by the Operator to the City. Any Operator owing money to the City for Assessments under this Chapter shall be liable to an action brought in the name of the City for the recovery of the amount of the debt. The City 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 City because of the failure of the Operator to timely remit Assessments, penalties, or interest to the City.

6-56.370 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 City, a refund may be sought by filing a claim according to the procedure set forth in Title 3, Chapter 3-28.080 of this Code.

6-56.380 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 Title 1 Section 1-28.010 of this Code. In addition, the Tax Collector may pursue on behalf of the City any civil or administrative remedy otherwise available for failure to comply with the requirements of this Chapter. If the City prevails in such action or proceeding, the City 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.

6-56.390 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 Tax Collector, which records the Tax Collector shall have the right to inspect at a reasonable time and following twenty-four (24) hours' prior written notice.

6-56.400 Advisory Board.

An Advisory Board is hereby created, which composition shall be made up of five (5) members appointed as follows:

One (1) Santa Rosa Chamber of Commerce employee

One (1) City of Santa Rosa employee

Three (3) hotel operators, at least one of whom is employed by a full service hotel and one of whom is employed by a select service hotel.

The Advisory Board shall thereafter be subject to Council Policy No. 000-06. Notwithstanding any Council Policy that may now or hereafter exist to the contrary, City employees shall serve on the Advisory Board. The Advisory Board shall advise the City Council 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. The Advisory Board shall meet as often as necessary to accomplish its goals, but no less than once each calendar quarter.

6-56.410 Administration.

(a) The City may contract with a Contractor to carry out the services, activities, and programs to be funded by 70% of the revenues from Assessments, as set forth in this Chapter and the Law, and as specified in the applicable Annual Report. The Santa Rosa Chamber of Commerce is hereby designated to act as the initial Contractor. Any contract between the City and the Contractor shall conform to the provisions of this Chapter.

(b) 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 6-56.290, provided that services, programs, or activities not authorized by 6-56.290 may not be paid for using revenues from Assessments. Prior to contracting with a Contractor, the City shall obtain a budget from the Contractor showing to the satisfaction of the City 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 City to inspect the Contractor's records, to perform audits and investigations, or to obtain reports from the Contractor as the City 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 City, with or without cause, on no less than thirty (30) days' notice.

(c) The Council may, in its sole discretion, remove the initial or any successor Contractor at any time. Upon such removal, the Council 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 City's own forces, in which case, the City may fund services performed and expenses incurred from revenues from Assessments.

(d) The contract with the Contractor shall be administered on behalf of the City by the Director of the Economic Development and Housing, who may authorize disbursements from the Santa Rosa Tourism Business Improvement Area Fund solely for the purposes set forth in 6-56.290.

6-56.420 Modification or Disestablishment of the Area.

(a) The Council, 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 Council 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 CITY Clerk requesting the Council to adopt a resolution of intention to modify or disestablish the Area, the Council shall adopt such resolution and act upon it as required by 6-56.420(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 amount or authorized uses of Assessments, 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 Council 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 3. Severability. 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 Council 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 4. Effective Date. 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 Council members 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 COUNCIL DULY PASSED AND ADOPTED this 3rd day of August, 2010.

AYES: (6) Mayor Gorin, Councilmembers Bender, Sawyer, Jacobi, Vas Dupre and Olivares

NOES: (0)

ABSENT: (1) Vice Mayor Wysocky

ABSTAIN: (0)

ATTEST: Sandi Bliss, Deputy City Clerk

APPROVED: Susan Gorin, Mayor

APPROVED AS TO FORM:
Caroline Fowler, City Attorney