

**ORDINANCE NO. 4170**

**ORDINANCE AMENDING CHAPTER 5.140 OF TITLE 5 OF  
THE MENDOCINO COUNTY CODE PERTAINING TO  
THE MENDOCINO COUNTY LODGING BUSINESS IMPROVEMENT DISTRICT**

The Board of Supervisors of the County of Mendocino ordains as follows:

Chapter 5.140 of Title 5 of the Mendocino County Code is amended to read as follows:

**"MENDOCINO COUNTY LODGING BUSINESS IMPROVEMENT  
DISTRICT**

**Section 5.140.010. Title**

This Chapter shall be known as the Lodging Business Improvement District Chapter of the County of Mendocino.

**Section 5.140.020. Authority**

This Chapter is adopted pursuant to the "Parking and Business Improvement Area Law of 1989," being Section 36500 to 36551 of the California Streets and Highways Code and Resolution of Intention No. 06-062 adopted by the Board of Supervisors of the County of Mendocino on April 11, 2006, and entitled "A RESOLUTION OF THE COUNTY OF MENDOCINO DECLARING ITS INTENTION TO ESTABLISH A BUSINESS IMPROVEMENT DISTRICT WITHIN THE BOUNDARIES OF THE UNINCORPORATED PORTION OF THE COUNTY OF MENDOCINO AND THE INCORPORATED AREA OF THE CITY OF FORT BRAGG, THE CITY OF POINT ARENA, THE CITY OF UKIAH, AND THE CITY OF WILLITS TO PROVIDE FOR THE LEVYING OF ASSESSMENTS ON SPECIFIED HOTEL BUSINESSES CONDUCTED WITHIN SUCH DISTRICT, CLASSIFYING HOTELS FOR SUCH PURPOSES, DESCRIBING THE BOUNDARIES OF THE PROPOSED AREA, THE AUTHORIZED USES TO WHICH THE PROPOSED REVENUES SHALL BE PUT, THE RATE OF SUCH ASSESSMENTS, FIXING THE DATE, TIME AND PLACE OF A HEARING TO BE HELD BY THE COUNTY BOARD OF SUPERVISORS TO CONSIDER THE ESTABLISHMENT OF SUCH DISTRICT, AND DIRECTING THE GIVING OF NOTICE OF SUCH HEARING." Such resolution was published and mailed as provided by law, and hearings thereon were held by the Board of Supervisors of the County of Mendocino at its regular meeting on May 9, 2006 at which time all persons desiring to be heard, and all objections made or filed, were fully heard. The Board of Supervisors of the County of Mendocino duly concluded the hearing on May 9, 2006, and determined that protests objecting to the formation of the District had not been made by a majority of the operators of Hotels within the District and that such protests are overruled and denied. The Board of Supervisors of the County of Mendocino finds that the operators of hotels in the District, in the opinion of the Board of Supervisors of the County of Mendocino,

will be benefited by the expenditure of funds raised by the assessments proposed to be levied.

**Section 5.140.030. Definitions**

Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter:

(a) **ADMINISTRATIVE FEE.** "Administrative fee" means a fee not to exceed three percent, which the County of Mendocino is entitled to retain from the assessments they collect within their respective boundaries to pay for the County's everyday administrative costs of the District.

(b) **ADVISORY BOARD.** "Advisory board" means the advisory board appointed by the Board of Supervisors of the County of Mendocino, and as recommended by the Board of Directors of the Mendocino County Lodging Association pursuant to this Chapter.

(c) **ANNUAL REPORT.** "Annual report" means the annual report as approved by the Board of Supervisors pursuant to the Business and Improvement Area Law of 1989.

(d) **ANNUAL MARKETING PLAN.** "Annual Marketing Plan" means the BID Advisory Board annual report as approved by the Board of Supervisors as it pertains to the improvements and activities to be provided, the estimate revenue, and the estimated costs of the improvements and activities to be provided.

(e) **ASSESSMENT.** "Assessment" means the levy imposed by this Chapter for the purpose of providing services, activities and programs promoting hotel tourism in the District and marketing the District.

(f) **BOARD.** "Board" means the Board of Supervisors of the County of Mendocino.

(g) **BOARD OF SUPERVISORS.** "Board of Supervisors" means the Board of Supervisors of the County of Mendocino.

(h) **BUSINESS AND IMPROVEMENT AREA LAW OF 1989.** "Business and Improvement Area Law of 1989" means the provisions of California Streets and Highways Code Sections 36500 to 36551, as amended.

(i) **CITY or CITIES.** "City" or "cities" shall mean, individually or collectively, any incorporated area of the County, such as the City of Fort Bragg, the City of Point Arena, the City of Ukiah, and the City of Willits.

(j) **CORE BUSINESS OR ORGANIZATIONAL INTEREST.** "Core Business or Organizational Interest" means a governing board applicant's primary source of business or employment income or organizational representation.

- (k) **COUNTY.** "County" means the County of Mendocino.
- (l) **COUNTY CLERK.** "County Clerk" means the Clerk of the Board of Supervisors.
- (m) **DISTRICT.** "District" means the Lodging Business Improvement District of the County of Mendocino created by this Chapter and as delineated in Section 5.140.040.
- (n) **ENFORCEMENT FEE.** "Enforcement fee" means the reimbursable fee, in addition to the administrative fee and any other penalties or fines, which the County is entitled to retain from the assessments they collect, equal to its actual costs of audits and actions to collect, minus any costs of audits and enforcement actions collected from operators in default of this Chapter.
- (o) **HOTEL or LODGING BUSINESS.** "Hotel" or "lodging business" means any structure or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, private residence, detached bedroom, motel, studio hotel, bachelor hotel, lodging houses, rooming houses, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.
- (p) **HOTEL REVENUES.** "Hotel revenues" means the gross revenues or gross rent collected from the occupancy of space prior to the levy of any tax or other charges.
- (q) **LARGE LODGING OPERATORS.** "Large Lodging Operators" are those lodging operators who, in the aggregate, most nearly generate the top 60% of the assessment revenue on a calendar year basis.
- (r) **LODGING BUSINESS IMPROVEMENT DISTRICT OF THE COUNTY OF MENDOCINO.** "Lodging Business Improvement District of the County of Mendocino" means the Mendocino County Lodging Business Improvement District that is created by this Chapter as a business improvement area pursuant to the Parking and Business Improvement Area Law of 1989 and as delineated in Section 5.140.040.
- (s) **MCLA.** "MCLA" means the Mendocino County Lodging Association.
- (t) **MEDIUM LODGING OPERATORS.** "Medium Lodging Operators" are those lodging operators ranked immediately below the Large Lodging Operators who, in the aggregate, most nearly generate the next 20% of the assessment revenue on a calendar year basis.
- (u) **MENDOCINO COUNTY LODGING ASSOCIATION.** "Mendocino County Lodging Association" means the Mendocino County Lodging Association, Inc., an Internal Revenue Code 501(c)(6) organization.

(v) **MENDOCINO COUNTY LODGING BUSINESS IMPROVEMENT DISTRICT.** "Mendocino County Lodging Business Improvement District" means the Lodging Business Improvement District of the County of Mendocino created by this Chapter and as delineated in Section 5.140.040.

(w) **OPERATOR.** "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession, licensee, or any other capacity, including but not limited to use of a managing agent. Where the operator performs his 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 Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(x) **PENALTY ASSESSMENT.** "Penalty Assessment" means the Penalties provided for in Section 5.140.130 which are imposed in addition to the Assessment and any other penalties or costs of audits and enforcement actions.

(y) **REGIONAL PROMOTIONAL ORGANIZATION.** "Regional Promotional Organization" means an organization in Mendocino County with regular meetings and an ongoing promotional mission focused on a particular region."

(z) **RENT.** "Rent" means the consideration charged, whether or not received, for the occupancy of space for a period of thirty (30) days or less, counting portions of calendar days as full days, in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction there from whatsoever.

(aa) **SMALL LODGING OPERATORS.** "Small Lodging Operators" are those lodging operators ranked below the Medium Lodging Operators who, in the aggregate, most nearly generate the bottom 20% of the assessment revenue on a calendar year basis.

(bb) **TAX ADMINISTRATOR.** "Tax Administrator" means the Treasurer-Tax Collector of the County of Mendocino.

#### **Section 5.140.040. Area Established–Description**

The Board of Supervisors finds and determines that the public convenience and necessity require the establishment of the District herein described. It further finds that the operators of hotels within the District will benefit from the activities undertaken to generate hotel tourism and marketing of the District. Pursuant to the Parking and Business Improvement Area Law of 1989, a parking and business improvement area is established, to be known as the "Mendocino County Lodging

Business Improvement District," herein called "District." The District encompasses all that area within the unincorporated area of the County of Mendocino and incorporated area within the City of Fort Bragg, the City of Point Arena, the City of Ukiah, and the City of Willits.

**Section 5.140.050. Authorized Uses**

The purpose of forming the District as a business improvement area under the Parking and Business Improvement Area Law of 1989 is to provide revenue to defray the costs of services, activities and programs promoting tourism which will benefit the operators of Hotels in the District through the promotion and marketing of the Hotels and related products, including scenic, recreational, cultural and other attractions in the District of benefit to the District. It is the intent of this Chapter to provide a supplemental source of funding for the promotion of tourism in the District and it is not intended to supplant any other existing sources of revenues that may be used by the County of Mendocino for the promotion of tourism or marketing of products produced within the County. The specific services, activities and programs to be provided by the District are as follows:

- (A) The general promotion of hotels operating within the District;
- (B) The marketing of products and events that have a connection with the hotel industry operating in the District;
- (C) The marketing of the District to the media and travel industry in order to benefit local tourism and the hotels in the District.
- (D) Any activities permitted under the Parking and Business Improvement Law of 1989 that are included as costs as specified in the annual report to be prepared by the advisory board and adopted annually by the Board of Supervisors. Activities means, but is not limited to, all of the following:
  - 1. Promotion of public events which benefit businesses in the area and which take place on or in public places within the area;
  - 2. Furnishing of music in any public place in the area;
  - 3. Promotion of tourism within the area;
  - 4. Activities which benefit businesses located and operating in the area;

**Section 5.140.060. Classification of Hotels and Assessments Imposed**

(A) Each operator of a hotel who collects rent and benefits from tourist visits and operates in the District will be assessed a share of the costs of the aforementioned services, activities and programs according to the rent revenues and the benefit to be received, and the assessment is hereby levied as set forth as a one percent (1%) levy on gross rent.

(B) The above-described assessment is an assessment calculated on a daily basis from gross rent revenues collected by each operator, is levied on the operators of the Hotels on a daily basis and is due to be collected on a quarterly basis.

**Section 5.140.070. Operator's Duties**

(A) The operator of a hotel may elect to pass on all or part of the assessment to customers of the hotel, in which case the operator of the hotel shall separately identify or itemize the assessment on any document provided to a customer. The amount of assessment levy shall be separately stated from the amount of the rent charged, and each customer shall receive a receipt for payment from the operator.

(B) If 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 Chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(C) Pursuant to Civil Code Section 2238, a proprietor performing his or her functions under this Chapter by a managing agent is responsible as principal for the negligence of his or her agent in the transaction of the business of the agency.

(D) Each operator of a hotel shall deliver a return to the Tax Administrator, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reporting period established by the Tax Administrator, which specifies the amount of gross rent collected during the previous three calendar months (calendar year quarterly basis) and pay the amount of the resulting assessment due from the operator to the County of Mendocino. The County of Mendocino shall collect the assessment from the operators of hotels within the District.

**Section 5.140.080. Exemptions**

The Board of Supervisors may elect to exempt a hotel business recently established in the area subject to this assessment from a given year's levy of assessments. If the Board elects to do so, it shall so specify in its annual resolution of intention that it must adopt pursuant to the Business and Improvement Area Law of 1989.

**Section 5.140.090. Reporting and Remitting**

(A) Each operator shall, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reportings period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by the Tax Administrator, of the total rent charged and received and the amount of

assessment due. Each operator shall describe in such return the assessment attributable to each hotel under the operator's control, together with the name of the owner of each hotel, the address and location of each hotel for which assessments are reported in the return. The Operator shall execute such return under penalty of perjury and shall return it to the Tax Administrator under the laws of the State of California.

(B) The failure to file such return shall be subject to a civil fine of Five Hundred Dollars (\$500). The fine shall be payable to the Tax Administrator within thirty (30) days after the Tax Administrator gives notice to an operator of the operator's failure to file the return.

(C) At the time the return is filed, the full amount of the assessment shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if the Tax Administrator deems it necessary in order to insure collection of the assessment and the Tax Administrator may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All assessments collected by operators pursuant to this Chapter shall be held in trust for the account of the County until payment thereof is made to the Tax Administrator.

#### **Section 5.140.100. Registration Certificate**

In order that the County will have an accurate record of parties being assessed a share of the costs of the District, each operator will be required to register as hereinafter provided.

(A) Each hotel owned or operated by the same owner or operator, at the time the District is formed, and located upon a separate parcel of property described by its own assessor's parcel number shall, within thirty days of the effective date of this ordinance, be automatically registered as such by the Tax Administrator. The Tax Administrator shall provide Hotel operators a Registration Certificate to be at all times posted in a conspicuous place on the premises. Each Hotel for which a separate business license is issued shall require a separate Registration Certificate.

(B) Prior to commencing business each operator, including each managing agent, of any Hotel shall register such hotel with the Tax Administrator and obtain from him or her a Registration Certificate to be at all times posted in a conspicuous place on the premises. The Registration Certificate shall, among other things, state the following:

- (1) Name and address of the hotel;
- (2) Name of the operator;
- (3) Name and address of owners;
- (4) Registration certificate number and date issued.

(C) The Registration Certificate shall not be transferable, and shall be returned to the Tax Administrator upon sale of property or cessation of business along with the final remittance of assessment due.

(D) The operator named on the face of the Registration Certificate shall be responsible for the assessment and shall remit such assessment to the Tax Administrator. The certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a Hotel without strictly complying with all local applicable laws, including but not limited to permit requirements from any board, commission, department, or office in this County.

(E) The owner of the hotel shall report all changes of operators or operations to the Tax Administrator immediately including, but not limited to, any change in operations, mailing address, or changes in ownership.

(F) The Registration Certificate may be revoked by the Tax Administrator upon failure to comply with any provision of this Chapter. Revocation by the Tax Administrator may be appealed to the Board of Supervisors as provided in Section 5.140.150. An appeal of revocation as provided herein will stay the revocation until the Board of Supervisors issues its decision.

(G) Operation of a hotel business subject to this Chapter without a valid Registration Certificate shall be a misdemeanor and shall be punishable as provided by Section 5.140.200 (VIOLATION – MISDEMEANOR). Each day of operation without a valid Registration Certificate shall be deemed to be a separate offense.

(H) The Tax Administrator shall not charge a fee to issue the Registration Certificate. All administrative costs to issue the Registration Certificate shall be reimbursable from the administrative fee provided in this Chapter.

#### **Section 5.140.110. Review of Assessments**

All of the assessments imposed pursuant to this Chapter shall be totaled in aggregate and reviewed by the Board of Supervisors and each assessment will be reviewed at least quarterly by the Tax Administrator to identify and notify operators in default of this Chapter. The Board of Supervisors shall review the assessments imposed pursuant to this Chapter based upon the annual report prepared by the advisory board appointed pursuant to this Chapter and Business and Improvement Area Law of 1989.

#### **Section 5.140.120. Imposition of Assessment**

The assessment imposed by this Chapter is levied upon the operators of Hotels within the District, and the operator of each hotel shall be solely responsible for paying all assessments when due. Notwithstanding the



foregoing, in the event that the operator of a Hotel elects to pass on some or all of the assessment to customers of the hotel, the operator of the hotel shall separately identify or itemize the assessment on any document provided to a customer. Assessments levied on the operators of a hotel pursuant to this Chapter and passed on to customers are not part of a hotel operator's gross receipts or gross revenues for any purpose, including the calculation of sales or use assessment, transient occupancy tax, or income pursuant to any lease. However, assessments that are passed on to customers shall be included in gross receipts for purposes of income and franchise assessments.

**Section 5.140.130. 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 percent (10%) 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 (30) days following the date upon which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment, in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.

(C) If the Tax Administrator or applicable collecting entity determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment 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 (1½) percent per month on the unpaid balance of the assessment, from the date on which the assessment first became delinquent until paid.

(E) The penalty assessment collected pursuant to this Section, including all penalties and interest, shall be added to the Assessment and shall be subject to the administrative fee and the 50% County match.

**Section 5.140.140. Determination of Assessment by Tax Administrator Upon Default of Operator**

(A) If any operator fails or refuses to calculate any assessment due, within the time provided in this Chapter, any report and remittance of an assessment, or any portion thereof required by this Chapter, the Tax Administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the assessment due. If the Tax Administrator determines that any levy imposed by this Chapter and payable by any operator has not been paid as

required by this Chapter, or that any operator has failed or refused to calculate the same, or to make any report or remittance required by this Chapter, the Tax Administrator shall determine the appropriate unpaid assessment, interest, and/or penalty for noncompliance, and shall notify the operator of the assessment, interest, and/or penalties as provided for by this Chapter. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address.

(B) Such operator may within ten (10) days after the serving of such notice or within fifteen (15) days after the mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the assessment, interest and penalties, if any, determined by the Tax Administrator, shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why said amount specified therein should not be fixed for such assessment, interest and penalties. At such hearing before the Tax Administrator, the operator may appear and offer evidence why such specified assessment, interest and penalties should not be so fixed.

(C) After such hearing, the Tax Administrator shall determine the proper assessment to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such assessment, interest and penalties. The Tax Administrator's determination shall be presumed to be correct. At any appeal before the Board of Supervisors described below, the operator has the burden of proving that the Tax Administrator's determination is incorrect, and the burden of producing sufficient evidence to establish the correct assessment liability. The amount determined to be due shall be payable within fifteen (15) days after such hearing, unless an appeal is taken to the Board of Supervisors as provided in Section 5.140.150 (APPEAL), below.

#### **Section 5.140.150. Appeal**

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of the assessment imposed by this Section, including interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within fifteen (15) days of the serving or mailing of the determination of assessment due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Tax Administrator shall give notice in writing to such operator at their last known place of address. The Tax Administrator shall present the matter to the Board and include evidence submitted by the operator. The Tax Administrator shall also include proposed findings and a resolution of the appeal. At the hearing, both the Tax Administrator and the owner or operator shall have an opportunity to

explain their case and introduce other statements or evidence. The Board 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 upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

**Section 5.140.160. Records**

(A) Every operator shall keep and preserve for a period of five (5) years all records as may be necessary to determine the amount of any assessment levied for which the operator may be liable for the payment to the County. The records deemed necessary for this determination shall include but not be limited to general ledgers, income tax returns, a chronological cash journal showing sales and sale type separately, or other comparable means of summarizing the operator's monthly or quarterly revenue, supported by receipts, which may, with reasonable effort, be identified with the revenue summary. These records shall be available, during regular business hours, for inspection by the Tax Administrator or Auditor–Controller. Performance of an audit does not waive the County's right to any assessment or the five (5) year requirement of preserving records.

(B) The Tax Administrator at his or her sole discretion may require that these records shall be brought to the County Auditor's Office for review and examination.

(C) It is unlawful for any County official or any person having an administrative duty under this Chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return or to permit any return or copy thereof to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid assessment or amounts of assessment levy required to be collected, interest and penalties.

**Section 5.140.170. Audit**

(A) The County Auditor–Controller may audit the books and records of any operator to determine the adequacy of the assessment levy due.

(B) All operators shall keep and make available to the Tax Administrator and the County Auditor–Controller records including but not limited to lodging receipts, room or lodging registration records, sales tax returns, daily maid reports, linen service invoices, and all records described above in Section 5.140.160 (RECORDS).

**Section 5.140.180. Refunds**

(A) Whenever the amount of any assessment levied, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this Chapter, it may be refunded as provided in Subparagraphs (B) and (C) of this Section, provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(B) In the event that the operator of a hotel elects to pass on some or all of the assessment to customers of the hotel, the operator of the hotel shall separately identify or itemize the assessment on any document provided to a customer. In this instance, any operator may claim a refund or take as credit against assessment levied and remitted to the County, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person who paid the assessment was incorrectly charged. Neither a refund nor a credit shall be allowed, however, unless the amount of the assessment so levied has either been refunded to the customer or credited to the account and subsequently paid to the customer or operator.

(C) A customer may obtain a refund of an assessment overpaid or paid more than once or erroneously or illegally collected or received by the County by filing a claim in the manner provided in Subparagraph (A) of this Section, but only when the assessment was paid by the customer directly to the Tax Administrator or when the customer, having paid the assessment to the operator, establishes to the satisfaction of the Tax Administrator that the customer has been unable to obtain a refund from the operator who elected to pass on some or all of the assessment unto the customer.

(D) No refund shall be paid under the provisions of this Section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

**Section 5.140.190. Actions to Collect**

(A) Any assessment required to be paid by any operator under this Chapter shall be deemed a debt owed by the operator to the County. If the operator of a hotel elects to pass on some or all of the assessment to customers of the hotel, the amount collected by the operator that has not been paid to the County shall be deemed a debt owed by the operator to the County. Any person owing money to the County under this Chapter shall be liable in an action brought in the name of the County of Mendocino for the recovery of such amount. The County shall be entitled to recover from anyone found liable for the debt, any costs, including attorney's fees, costs of enforcement, or other expenses incurred by the

County because of the failure to timely remit assessment levy to the County.

(B) If judgment is obtained by the County, such judgment shall be recorded and shall constitute a lien against the property where the hotel is located.

(C) Whenever a debt owed by the operator to the County under this Chapter has not been paid to the County and the operator's Registration Certificate has been revoked under this Chapter, the County may obtain a court injunction against further operation of the hotel until the debt owed has been paid.

(D) The remedies for enforcement or collection provided in this Chapter shall be cumulative and not exclusive.

**Section 5.140.200. Violations–Misdemeanor**

(A) Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor which shall be punishable by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

(B) Any operator or other person who fails or refuses to register as required herein or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator or who renders a false or fraudulent return or claim is guilty of a misdemeanor which is punishable as aforesaid.

(C) Any person making, rendering, signing or verifying any report or claim, who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this Chapter is guilty of a misdemeanor which is punishable as aforesaid. In addition, the Tax Administrator 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, the County shall be entitled to recover any costs, including attorney's fees, costs of enforcement, or other expenses incurred because of failure to comply with the requirements of this Chapter. Failure to pay such costs upon demand shall be grounds for revocation of an operator's certificate of registration as provided in Section 5.140.100 (REGISTRATION CERTIFICATE) above.

**Section 5.140.210. Advisory Board**

(A) Pursuant to the Business and Improvement Area Law of 1989, an advisory board with five members shall be appointed by the Mendocino County Board of Supervisors only for fulfilling the purposes of the Business and Improvement Area Law of 1989. Members of the advisory board shall be selected and appointed by the Mendocino County Board of

Supervisors from a list of nominees prepared by the Board of Directors of the Mendocino County Lodging Association. All nominees must be owners or operators of Hotels within the District, or employed by the operator of a Hotel within the District. Two members shall be appointed to represent the inland area of the District. Two members shall be appointed to represent the coastal region of the District. One member shall be appointed to represent the Mendocino County Lodging Association. Members of the advisory board shall serve two year terms, with two members appointed in every even numbered year and three members appointed in every odd numbered year

(B) The advisory board shall convene to cause to be prepared the annual report for the purposes of the Business and Improvement Area Law of 1989.

(C) The advisory board shall attempt to submit its annual report to the Board of Supervisors at least ninety (90) days preceding the fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report.

(D) The Board of Supervisors hereby gives authority to the Chief Executive Officer or designee to convene the advisory board, approve the bylaws, and approve the annual work plan for the advisory board.

(E) Nothing in this Chapter shall preclude the advisory board from convening at a meeting with the Board of Directors of the Mendocino County Lodging Association to prepare and discuss the annual report with other countywide promotional and marketing organizations.

#### **Section 5.140.220. Annual Report**

(A) Pursuant to the Business and Improvement Area Law of 1989, the advisory board shall cause to be prepared an annual report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.

(B) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:

(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(C) The Board of Supervisors may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The Board of Supervisors shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

(D) The BID Advisory Board annual report, as approved by the Board of Supervisors, shall, as it pertains to the improvements and activities to be provided, the estimated revenue, and the estimated costs of the improvements and activities to be provided, be deemed the BID Annual Marketing Plan.

**Section 5.140.230. Modification or Disestablishment of the District**

(A) The Board of Supervisors, by ordinance, may modify the provisions of this Chapter and may disestablish the District, after adopting a resolution of intention pursuant to such procedures prescribed by law, including the "Parking and Business Improvement Area Law of 1989," being Section 36500 to 36551 of the California Streets and Highways Code. Such resolution shall describe the proposed change or changes, or indicate it proposes 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 Hotels who pay fifty (50) percent or more of the assessments in the District file a petition with the County Clerk requesting the Board of Supervisors to adopt a resolution of intention to modify or disestablish the District, the Board of Supervisors shall adopt such resolution and act upon it as required by law. Signatures on such petition shall be those of a duly authorized representative of the operators of Hotels in the District.

(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 District, such proceedings shall terminate if protest is made by the operators of Hotels who pay fifty (50) percent or more of the assessments in the District, or in the existing boundaries of the District if it is proposed to be enlarged.

(D) If the resolution proposes disestablishment of the District, the Board of Supervisors shall disestablish the District; unless at such hearing, protest against disestablishment is made by the operators of Hotels paying fifty (50) percent or more of the assessments in the District.

(E) In considering written protests submitted by owners of lodging businesses in an incorporated city to the formation of the District, the Board shall separately determine the number of written protests submitted by lodging business owners within the boundaries of each city. If written protests are received from lodging businesses operators who will pay more than fifty percent (50%) of the assessments proposed to be levied within the boundaries of the city where the operator conducts businesses, then the Board of Supervisors shall declare lodging businesses in the incorporated city excluded from the District and ineligible to benefit from the activities of the District.

(F) Within one year from receipt of a signed petition protesting the assessment and requesting the removal from the District boundaries by owners of lodging businesses in an incorporated city who will pay more than fifty percent (50%) of the assessments proposed to be levied in that incorporated city boundary, the Board shall remove the incorporated city and all lodging businesses contained therein from the District pursuant to such procedures prescribed by law, including Streets & Highways Code section 36550 to 36551.

**Section 5.140.240. Administrative Fee**

(A) The county shall be entitled to charge an amount equal to its actual costs of collection and administration, not to exceed three percent (3%) of the assessments collected from operators of Hotels in the District, to defer the administrative costs incurred for the operation of the District. Notwithstanding the foregoing, the three percent (3%) administrative fee limit shall not apply to audit and enforcement costs and other related unforeseeable costs.

(B) All assessments, less the aforementioned administrative fee and enforcement costs, shall be transferred to the Mendocino County Lodging Association ("MCLA") within thirty (30) days following collection of the assessment by the County. Prior to the expenditure of such funds, the MCLA shall enter into a contract with the County.

**Section 5.140.245. Business Improvement District (BID)  
Administration and Implementation**

The Board of Supervisors shall annually designate a Contractor that shall be responsible for administration of the Business Improvement District (BID) including hiring and oversight of the individual or entity charged with implementation of the Annual Marketing Plan that is annually approved by the Board of Supervisors for countywide promotion and marketing.

**Section 5.140.250. Contract**

A. Prior to the expenditure of any District funds, the Contractor shall enter into a contract with County for the services, activities and



programs authorized by this Chapter. Pursuant to said contract, all assessments, including assessment penalties and interest, less the aforementioned administrative fee and audit and enforcement costs, shall be transferred to the Contractor within thirty (30) days following collection of the assessment by the County.

- B. The scope of services of the contract will itemize the services, activities, and programs to be provided by the Contractor or subcontracted by the Contractor for the District.
- C. This contract shall provide for a fifty percent (50%) County match of the assessment collected and expended pursuant to this Chapter for the purpose of countywide promotion. The fifty percent (50%) County match shall be calculated based on the prior calendar year's gross receipts and shall be directed to the Contractor in twelve equal monthly installments on a fiscal year basis. Increased matching funds generated by increased assessment receipts in the subsequent calendar year shall be allocated in the following fiscal year as recommended by the Annual Report, including establishment or addition to a District prudent reserve fund. Decreased income received in the subsequent calendar year may be covered, in whole or in part, by transfers from the prudent reserve, as recommended by the Annual Report contingent on available. The County may provide an advance in funds to the District and the contract shall provide for the terms and conditions of the advance.
- D. The Contract shall provide that all copyright and other use rights in any and all promotional and marketing materials, including, but not limited to, any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor which are currently held or controlled by the Contractor, or which may be created during the term of this contract, shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County.
- E. The Contract shall provide that all existing and unexpended material and financial assets of any kind derived from the BID assessment and match and transferred to Contractor by Visit Mendocino County, Inc., shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County;
- F. The Contract shall require that all of the following conditions shall be incorporated into the bylaws of the Contractor's governing board and shall only be changed with the concurrence of the County and amendment of this section:

1. The governing board shall be subject to the Brown Act and provide for financial transparency in all promotional and marketing activities, including payroll;
2. The governing board shall be comprised of eleven (11) members of whom five (5) shall be directly elected by lodging operators as provided herein and six (6) shall be appointed by the Board of Supervisors as provided herein;
3. Governing board members:
  - a) Shall be required to submit a resume showing relevant experience, complete a questionnaire demonstrating their interest and commitment in promoting Mendocino County, and agree to actively participate in governing board meetings, committees, trainings and other scheduled board activities;
  - b) Shall be elected or appointed to three year terms based on their core business or organizational interest as defined herein except the At Large appointee shall be appointed based on their knowledge and commitment to promoting Mendocino County;
  - c) Shall be subject to terms limits of not more than two terms (except a member who has completed less than one half of a full term may serve two additional terms if duly elected or appointed);
  - d) Shall be ineligible to serve for three years after being termed out;
4. Lodging members of the governing board shall be directly elected by lodging operators, who shall be classified as "large", "medium", or "small", based on their gross receipts for the calendar year preceding the election, and who shall vote the percentage of the assessment paid by them, in a County conducted election, as follows:
  - a) One (1) member elected by and from all large lodging operators;
  - b) One (1) member elected by and from all large coastal lodging operators;
  - c) One (1) member elected by and from all large inland lodging operators;
  - d) One (1) member elected by and from all medium lodging operators;
  - e) One (1) member elected by and from all small lodging operators;
5. Non-lodging members of the governing board shall be appointed by the Board of Supervisors from applicants who have applied or been nominated as follows:
  - a) One (1) member nominated by and from a coastal chamber of commerce or coastal regional promotional organization;
  - b) One (1) member nominated by and from an inland chamber of commerce or inland regional promotional organization;

- c) One (1) member nominated by and from a winery or winegrower organization or who applies from an individual winery or winegrower;
  - d) One (1) member who is nominated by and from an arts organization, by and from an attractions governing board, or who applies from an individual attraction;
  - e) One (1) member who applies from a food or beverage business, including culinary, beer or other spirits;
  - f) One (1) member who applies At Large
6. The terms of governing board members shall be staggered so that no less than three or more than four members shall be elected or appointed in any one year (except to fill a vacant unexpired term) with initial terms elected or appointed as follows, with all subsequent terms to be for three years;
- a) Large lodging elected by all large lodging operators: three (3) years;
  - b) Large lodging elected by all large inland lodging operators: two (2) years;
  - c) Large lodging elected by all large coastal lodging operators: one (1) year;
  - d) Medium lodging elected by all medium lodging operators: two (2) years;
  - e) Small lodging elected by all small lodging operators: three (3) years;
  - f) Coastal chamber of commerce or regional promotional organization: three (3) years;
  - g) Inland chamber of commerce or regional promotional organization: two (2) years;
  - h) Winery or winegrower or winery or winegrower: three (3) years;
  - i) Arts or Attractions: (two (2) years);
  - j) Food and Beverage (including culinary, beer and other spirits): one (1) year;
  - k) At Large: one (1) year;

(G.) The BOS shall provide for public noticing of all vacancies; shall actively encourage multiple nominations for each open seat; and shall provide for geographical diversity.

**Section 5.140.260. Enforcement Fee**

The County shall be entitled to retain from the assessments they collect an enforcement fee equal to its actual costs of actions to collect including but not limited to attorney fees, minus any penalties collected from operators in default of this Chapter. The fee provided by this Section shall be in addition to the three percent Administrative Fee charged under Section 5.140.240 above.

**Section 5.140.270. Effective Date**

The ordinance codified in this Chapter shall take effect and be in force on \_\_\_\_ day of \_\_\_\_, 2015.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this \_\_\_\_day of \_\_\_\_, 2015, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

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

\_\_\_\_\_  
CARRE BROWN, Chair  
Mendocino County Board of Supervisors

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

By: \_\_\_\_\_

APPROVED AS TO FORM:

DOUGLAS L. LOSAK, Interim County Counsel

By: \_\_\_\_\_