ORDINANCE NO. 2013-05

AN ORDINANCE OF THE CITY OF SANTA CRUZ AMENDING SECTIONS 3.28.020, 3.28.03, 3.28.040, 3.28.045, 3.28.060, 3.28.070, 3.28.110, 3.28.130, 3.28.131, 3.28.133, 3.28.134, 3.28.140 AND 3.28.150 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO TRANSIENT OCCUPANCY TAX

BE IT ORDAINED By The City Of Santa Cruz As Follows:

<u>Section 1</u>: Section 3.28.020(6) of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.020 DEFINITIONS.

(6) "Operator" shall mean the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs through a managing agent of any type or character other than an employee, the managing agency shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Any and all persons or entities qualifying as an operator must be in compliance with the provisions of this chapter, and are subject to joint and several liability if any are not in compliance.

<u>Section 2</u>: Section 3.28.030 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.030 TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in an amount of eleven percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the Director of Finance may require that such tax shall be paid directly to the Director of Finance.

<u>Section 3</u>: Section 3.28.040 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.040 EXEMPTIONS.

No tax shall be imposed upon:

- (1) Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided for in this chapter.
- (2) Any federal or state officer or employee when on official business.
- (3) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemptions shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury on a form prescribed by the Director of Finance.

<u>Section 4</u>: Section 3.28.045 of the Santa Cruz Municipal Code is hereby amended as follows:

3.28.045 ALLOCATION OF REVENUE TO PROMOTE TOURISM AND PROVIDE SERVICES TO THE HOMELESS.

Deleted in its entirety.

<u>Section</u> 5: Section 3.28.060 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.060 REGISTRATION.

- (a) Within thirty days after the effective date of the ordinance codified herein, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Director of Finance and obtain a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. This certificate shall, among other things, state the following:
 - (1) The name of the operator;
 - (2) The address of the hotel;
 - (3) The date upon which the notice was issued;
 - (4) "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirement of the Uniform Transient Occupancy Tax Ordinance to register with the Director of Finance for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the Director of Finance. This 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 those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."
- (b) Each operator of any hotel who commences operation of a hotel after a sale, assignment or other transfer of the hotel to that operator shall also comply with Section 3.28.140 in addition to registering the hotel as required by this Section.
- <u>Section 6</u>: Section 3.28.070 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.070 REPORTING AND REMITTING/TAXES TO BE HELD IN TRUST.

- (a) Each operator shall, on or before the last business day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Director of Finance, file a return on a form approved by the Director of Finance, the total rents charged and received and the amount of transient occupancy tax collected during that applicable period. At the time the tax return is filed, the full amount of tax collected for the calendar quarter or shorter reporting period shall be remitted to the Director of Finance.
- (b) Effective, July 1, 2013, notwithstanding subsection (a), above, each operator shall, on or before the last business day of the month following the close of the preceding calendar month, or at the close of any shorter reporting period which may be established by the Director of Finance, file a return on a form approved by the Director of Finance, the total rents charged and received and the amount of transient occupancy tax collected during the applicable period. At the time the tax return is filed, the full amount of tax collected for the preceding calendar month or shorter reporting period shall be remitted to the Director of Finance.
- (c) The Director of Finance may establish shorter reporting periods for any operator if the director deems it necessary in order to ensure full remittance and collection of the tax. The Director of Finance may require an operator to furnish additional information on the return or to provide adequate security as necessary to ensure collection of any taxes due or to become due. An operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the Director of Finance.
- (d) Returns and payments are due immediately upon cessation of business for any reason.
- (e) All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the City until payment thereof is made to the Director of Finance.

<u>Section 7</u>: Section 3.28.080(c) of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.080 PENALTIES AND INTEREST

(c) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the last day of the month following the quarterly period or at the close of any shorter reporting period which may be established by the Director of Finance for which the amount of any portion thereof should have been paid until the date of payment.

(d) Relief from Penalties.

(1) Excusable Delay. If the Director of Finance finds that an operator's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred, notwithstanding the exercise of ordinary care and the absence of willful neglect, the Director of Finance may waive the first penalty provided for in subsection (a)(1) above.

Any person seeking to be relieved of the first penalty shall file with the Director of Finance a statement under penalty of perjury setting forth the facts upon which the claim for relief is based. This request for relief from the first penalty must be filed within thirty days the remittance was due to the city, but no later than ten days of the city's notice to the operator of the amount past due.

<u>Section 8</u>: Section 3.28.110 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.110 RECORDS.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of four years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the city. As a minimum these records shall include worksheets used to prepare tax returns, computations of occupancy ratios on a calendar monthly basis, preprinted and serialized registration cards and a register of guests and the room or apartment number occupied. The Director of Finance, or designated representative, shall have the right to inspect such records at all reasonable times.

<u>Section 9:</u> Section 3.28.120 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.120 REFUNDS.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections (b) and (c) of this section provided a claim is founded, is filed with the Director of Finance within one year of the date of payment. The claim shall be on forms furnished by the Director of Finance.

<u>Section 10:</u> Section 3.28.130 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.130 ACTIONS TO COLLECT.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city of Santa Cruz for the recovery of such amount and for attorneys' fees in the enforcement of this chapter.

<u>Section 11:</u> Section 3.28.131 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.131 LIEN – RECORDATION.

If any amount required to be paid to the city under the ordinance codified in this chapter is not paid when due, the Director of Finance, upon expiration of the second delinquency period referenced in Section 3.28.080(a)(2), may within four years after the amount is due, record in the Office(s) of the County Recorder(s) of any county in the State of California a certificate specifying the amount of tax, penalties and interest due, the name and address of the operator liable for the same and the fact that the Director of Finance has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the recording, the amount required to be paid together with penalties and interest shall constitute a lien upon any and all real property in any county owned by the operator or thereafter acquired by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

<u>Section 12:</u> Section 3.28.133 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.133 WARRANT FOR COLLECTION OF TAX.

At any time within four years after any operator is delinquent in the payment of any amount herein required to be paid off after the last recording of a certificate of lien under Section 3.28.131 of this chapter, the Director of Finance may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Director of Finance may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution.

<u>Section 13:</u> Section 3.28.134 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.134 SEIZURE AND SALE.

At any time within four years after any operator is delinquent in the payment of any amount, the Director of Finance may forthwith collect the amount in the following manner: The Director of Finance shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect occupancy taxes due shall be only of property of the operator not exempt from execution under the provisions of the California Code of Civil Procedure.

<u>Section 14:</u> Section 3.28.140 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.140 SUCCESSOR'S AND ASSIGNEE'S RESPONSIBILITY.

If any operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the hotel or quits the hotel, whether voluntarily or involuntarily; the operator's subsequent successor, assign or other transferee, or other person or entity obtaining ownership or control of the hotel, shall satisfy any transient occupancy tax liability owed to the city associated with the property. Failure to do so for the benefit of the city will result in being personally liable to the city for the full amount of the transient occupancy tax liability, which includes interest and penalties.

The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the hotel shall notify the Director of Finance of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the hotel was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the hotel shall be deemed to have complied with the requirement of this section to satisfy the unpaid transient occupancy tax liability, if that person or entity complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the purchase price an amount sufficient to cover the tax liability, or by otherwise paying the tax liability until the Director of Finance provides a "Transient Occupancy Tax Clearance Certificate" showing that it has been paid and stating that no amount is due through the date of transfer.

The Director of Finance, within 90 days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the hotel, may issue a "Transient Occupancy Tax Clearance Certificate" stating either the amount of tax liability due and owing for the property, or stating that there is no tax liability due and owing for the property. The Director of Finance may also request financial records from the current or former owner or operator to conduct an audit of the transient occupancy tax that may be due and owing. After completing the audit within 90 days after the date that the records were made available, the Director of Finance may issue a tax clearance certificate within 30 days of completing the audit, stating the amount of the tax liability owed, if any. If the city determines that the records provided for an audit are insufficient, the Director of Finance may rely on the facts and information available to estimate any transient occupancy tax liability associated with the property. The Director of Finance may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax clearance certificate must be made within ten days after the serving or mailing of the certificate. The hearing provision of Section 3.28.90 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

<u>Section 15:</u> Section 3.28.150 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.150 PENALTY FOR VIOLATIONS.

- (a) Any operator or other person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment, as provided in Title 4 of this code, in addition to the penalties provided for in this chapter or elsewhere in this code.
- (b) Any operator or other person who fails or refuses to register as required in Section 3.28.060, 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 Director of Finance, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as stated above in subsection(a), in addition to being subject to the other penalties provided for in this chapter or code, or elsewhere. Any person required to make, render, sign or verify 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 to be made is guilty of a misdemeanor and is punishable as stated above in subsection (a), in addition to the penalties provided for in this chapter or code, or elsewhere.
- (c) All remedies prescribed by this chapter or code, or any other provisions of law and the use of one or more remedies by the city are cumulative, and shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

<u>Section 16:</u> Section 3.28.160 of the Santa Cruz Municipal Code is hereby amended to read as follows:

3.28.160 EFFECTIVE DATE.

The provisions of this chapter shall become operative on the first day of the calendar month immediately succeeding the effective date of the ordinance, which will be thirty (30) days after final adoption.

City Clerk Administrator

PASSED FO	R PUBLICATION t	this 14th day of M	ay, 2013, by the follo	owing vote:
AYES:	Councilmembers Terrazas, Comstock, Lane, Mathews, Posner; Vice Mayor Robinson; Mayor Bryant.			
NOES:	None.			
ABSENT:	None.			
DISQUALIFIED:	None.			
	APPROVED: ss/Hilary Bryant, Mayor			
ATTEST: ss/Bren Lo	ehr, City Clerk Adm	inistrator		
PASSED FO following vote:	R FINAL ADOPTIO	ON this	day of	, 2013, by the
AYES:				
NOES:				
ABSENT:				
DISQUALIFIED:				
		APPROVED:	:Mayor	
ATTEST:City Clo	erk Administrator			
This is to certify that the ab and foregoing document is original of Ordinance No. 2 and that it has been publish posted in accordance with t Charter of the City of Santa	the 2013-05 ed or he			