

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-14 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton and Brook Bassan

1 ORDINANCE

2 ESTABLISHING A BUSINESS IMPROVEMENT DISTRICT, TO BE KNOWN AS
3 THE ALBUQUERQUE TOURISM MARKETING DISTRICT.

4 WHEREAS, the City of Albuquerque is authorized pursuant to the Business
5 Improvement District Act, NMSA 1978, Sections 3-63-1 to -16, to establish
6 business improvement districts to provide services that shall attempt to
7 restore or promote the economic vitality of the district and the general welfare
8 of the City of Albuquerque; and

9 WHEREAS, the allocation of the City’s lodgers tax revenues that is used for
10 marketing and promoting the City of Albuquerque is insufficient to adequately
11 market and promote the City to visitors and additional funds are needed to
12 market and promote the City to visitors; and

13 WHEREAS, a petition to create a business improvement district, to be
14 known as the Albuquerque Tourism Marketing District (“ATMD”) has been
15 presented to the City Council, approved by ten (10) or more business owners
16 comprising at least fifty-one percent (51%) of the total number of businesses
17 proposed to be included in the ATMD; and

18 WHEREAS, a Planning Group appointed by the City Council has
19 recommended the creation of said ATMD and has prepared the ATMD
20 business improvement district plan; and

21 WHEREAS, a majority of the City Council has approved the subject ATMD
22 proposal; and

23 WHEREAS, it would be appropriate to create the proposed ATMD to
24 promote the economic vitality of ATMD lodging businesses and the City of
25 Albuquerque by providing additional tourism promotion services and
26 improvements that are intended and designed to increase overnight visitation
27 to ATMD lodging businesses and the City of Albuquerque.

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1 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
2 ALBUQUERQUE:

3 SECTION 1. A business improvement district, hereafter referred to as the
4 Albuquerque Tourism Marketing District (“ATMD”), is established and is
5 hereby authorized to be created under the following terms and conditions:

6 1. The initial period of existence for the ATMD shall be for a five (5) year
7 period, from July 1, 2022, or as soon as possible thereafter, and end five (5)
8 years from its start date. Prior to the expiration of the ATMD’s initial term, the
9 City Council shall review the ATMD to determine whether it should remain in
10 existence and be renewed. If a majority of the City Council decides that the
11 purpose for which the ATMD was created has been served and that it is in the
12 best interest for the ATMD, the City Council shall terminate the ATMD’s status
13 by ordinance or resolution and record the ordinance or resolution with the
14 municipal clerk. If the City Council determines that the ATMD should remain
15 in existence, it may renew the ATMD for an additional five (5) year term.

16 2. The ATMD District Plan, dated March 2, 2022, prepared by the
17 Planning Group is hereby adopted and approved.

18 3. The ATMD shall provide additional tourism promotion services and
19 improvements that are designed and intended to increase overnight visitation
20 to ATMD lodging businesses and the City of Albuquerque. The additional
21 tourism promotion services and improvements to be provided are sales,
22 marketing, and communications; visitor services enhancements; destination
23 product development / partner grants; and related administration programs, as
24 described in Section IV of the ATMD District Plan. The ATMD District Plan is
25 attached hereto and incorporated by reference as “Exhibit B” of this
26 Ordinance.

27 4. The additional tourism promotion services and improvements to be
28 provided by the ATMD are intended and designed to increase overnight
29 visitation to and room sales at lodging businesses within the boundaries of
30 the ATMD. The businesses to be assessed a business improvement benefit
31 fee for the ATMD are all lodging businesses, existing and in the future,
32 available for public occupancy within the boundaries of the commercial areas
33 of the City of Albuquerque as shown on the map attached hereto and

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1 incorporated by reference as “Exhibit A” of this Ordinance. “Lodging
2 business” means: a hotel, apartment, apartment hotel, apartment house,
3 lodge, lodging house, rooming house, motor hotel, guest house, bed and
4 breakfast, guest ranch, ranch resort, mobile home, motor court, auto court,
5 trailer court, trailer camp, tourist camp, cabin or other premises used for
6 lodging.

7 5. The ATMD business improvement benefit fee is levied solely upon
8 the ATMD lodging businesses, and the lodging business owners are solely
9 responsible for payment of the business improvement benefit fee when due. If
10 the lodging business owner chooses to collect any portion of the business
11 improvement benefit fee from a guest, that portion shall be specifically called
12 out and identified for the guest in any and all communications from the
13 lodging business owner as the “Tourism Marketing Benefit Fee” as specified
14 in the District Plan.

15 6. The additional tourism promotion services and improvements to be
16 provided by the ATMD shall be funded by the levy of a business improvement
17 benefit fee on lodging businesses within the ATMD boundary, as
18 recommended by the Planning Group. The business improvement benefit fee
19 shall be levied on the basis of benefit to the ATMD lodging businesses.
20 Because the additional tourism promotion services and improvements to be
21 provided by the ATMD are intended to increase room rentals at ATMD lodging
22 businesses, a business improvement benefit fee based on room rentals is the
23 best measure of benefit. The annual business improvement benefit fee shall
24 be two percent (2%) of ATMD lodging businesses’ gross room rental revenue.
25 The total five (5) year improvement and service plan budget is projected at
26 approximately \$4,800,000 annually, or \$24,000,000 total over the term of the
27 ATMD. This amount may fluctuate as sales and revenue increase at assessed
28 lodging businesses. Furthermore, as calculation of the ATMD budget was
29 based on data collected prior to the COVID-19 pandemic, this amount may
30 fluctuate in accordance with post-COVID economic circumstances. Based on
31 the benefit received, business improvement benefit fees will not be levied on:
32 stays or more than thirty (30) consecutive days; stays pursuant to a written
33 agreement for at least thirty (30) consecutive days; stays by any person to

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1 whom rent is charged at the rate of \$2.00 per day or less; stays at institutions
2 of the federal government, the state or any political subdivisions thereof;
3 stays at religious, charitable, educational, or philanthropic institutions,
4 including without limitation stays at summer camps operated by such
5 institutions; stays at clinics, hospitals, or other medical facilities; stays at
6 privately-operated convalescent homes or homes for the aged, inform,
7 indigent, or chronically ill; stays at any short term rental unit; and stays
8 pursuant to contracts executed prior to July 1, 2022.

9 7. The ATMD business improvement benefit fee shall be collected by
10 the City of Albuquerque monthly, in accordance with Section IV of the District
11 Plan.

12 8. Bonds shall not be issued to fund ATMD services or improvements
13 or for the retirement of pre-existing debt of the City of Albuquerque.

14 9. ATMD business improvement benefit fee funds received by the City
15 of Albuquerque shall be held in a special account for the benefit of the ATMD
16 and shall only be used for the purposes set forth in this Ordinance and the
17 District Plan. The funds shall be distributed to the management committee on
18 a monthly basis by providing the funds received monthly to the management
19 committee within thirty (30) days of receipt, less the City of Albuquerque's one
20 percent (1%) charge for its expense of assessing, collecting, and
21 administering the ATMD business improvement benefit fee.

22 10. Pursuant to NMSA Section 3-63-11, the City Council hereby appoints
23 Visit Albuquerque, an existing nonprofit corporation operating within the
24 boundaries of the district, to serve as the management committee for the
25 ATMD. Visit Albuquerque shall be responsible for the operation of the ATMD
26 and the administration and implementation of the District Plan. Visit
27 Albuquerque shall serve as the management committee for the five (5) year
28 term of the ATMD unless removed earlier by the City Council. As the ATMD
29 management committee, Visit Albuquerque shall do all of the following:

- 30 a. Prepare and file annually with the City Council for its review and
31 approval a budget and progress report for the ATMD;
- 32 b. Administer all improvements within the ATMD;

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1 c. Recommend the annual assessment to be made by the City Council;
2 and

3 d. File annually with the City Council a report of the ATMD activities for
4 the preceding fiscal year, which report shall include a complete financial
5 statement setting forth its assets, liabilities, income, and operating expenses
6 as of the end of the fiscal year and the benefits of the ATMD's program to the
7 ATMD lodging businesses owners.

8 11. During the operation of the ATMD, there shall be a thirty (30) day
9 period each year in which ATMD lodging businesses may request
10 disestablishment of the ATMD. The first such period shall begin one (1) year
11 after the date of establishment of the ATMD and shall continue for thirty (30)
12 days. Each successive year of operation of the ATMD have such a thirty (30)
13 day period. Upon the written petition of ATMD lodging businesses comprising
14 at least fifty-one percent (51%) of the total number of lodging businesses then
15 operating within the ATMD, the City Council shall notice a hearing on
16 disestablishment of the ATMD.

17 12. The ATMD shall reimburse the City for any costs associated with
18 collecting unpaid business improvement benefit fees. If sums in excess of the
19 delinquent ATMD business improvement benefit fees are sought to be
20 recovered in the same collection action by the City, the ATMD shall bear its
21 pro rata share of such collection costs. Assessed lodging businesses which
22 are delinquent in paying the business improvement benefit fee shall be
23 responsible for paying:

24 a. Original Delinquency: Lodging businesses shall make a return by the
25 25th of each month on forms provided by the City for lodging paid to the
26 lodging business in the preceding calendar month and shall remit therewith to
27 the City payment of the business improvement fee then. The report shall
28 include sufficient information to enable the City to audit the report. If the 25th
29 day of the month falls on a weekend or holiday, the return shall be due on the
30 next business day. If any lodging business makes a return without paying the
31 business improvement benefit fee then due, the lodging business shall be
32 liable for the business improvement benefit fee and a penalty equal to ten
33 percent (10%) thereof or \$100, whichever is greater. Promptly after receipt of

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1 such return, the City shall give the delinquent lodging business written notice
2 of the business improvement benefit fee and penalty.

3 b. Neglect or Refusal to Make Return: If any lodging business neglects
4 or refuses to make a return and pay the business improvement benefit fee, the
5 Mayor shall make an estimate based upon an examination of the lodging
6 business' books and records, or upon any information in its possession or
7 that may come into its possession, of the amount of gross room rental
8 revenue of the delinquent lodging business for the period in respect to which
9 the lodging business has failed to make a return, and upon the basis of said
10 estimated amount shall compute and assess the business improvement
11 benefit fee payable by the delinquent lodging business, adding to this amount
12 a penalty equal to ten percent (10%) thereof or \$100, whichever is greater.
13 Promptly thereafter the City shall give the delinquent lodging business written
14 notice of the estimated business improvement benefit fee and penalty.

15 c. Continued Delinquency: If payment is not made by the lodging
16 business within fifteen (15) days of the date of the notice that the business
17 improvement benefit fee is delinquent, the Mayor may bring an action in law or
18 equity in the district court for the collection of any amounts due, including
19 without limitation penalties thereon, interest on the unpaid principal at a rate
20 of not exceeding one percent (1%) a month, the costs of collection and
21 reasonable attorneys' fees incurred in connection therewith.

22 d. Continuous Surety Bond: A Continuous Surety Bond naming the City
23 as beneficiary in the amount of \$3,000 plus \$60 per room or individual
24 sleeping accommodation available for use by the public shall be posted and
25 filed with the City Clerk upon a lodging business' failure to remit business
26 improvement benefit fees for two (2) consecutive months. If payment or
27 posting Continuous Surety Bond is not made by the lodging business within
28 fifteen (15) days of the date of notice that the business improvement benefit
29 fee is delinquent, the Mayor may bring an action in law or equity in the district
30 court for the collection of any amount due, including without limitation
31 penalties thereon, interest on the unpaid principal at a rate not exceeding one
32 percent (1%) a month, the costs of collection and reasonable attorneys' fees
33 incurred in connection therewith. Continuous Surety Bond shall remain in

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1 force three (3) years from date of issuance per arrear incident applicable.
2 Continuous Surety Bond may be augmented or applied to any succeeding
3 arrear business improvement benefit fee due the City of Albuquerque.

4 e. Lodging Business Disputes: A lodging business that disputes the
5 assessment of any business improvement benefit fee or related penalties and
6 interest may, within five (5) working days of the date of the notice from the
7 City that the business improvement benefit fee is delinquent, appeal the
8 Mayor’s decision to the City Hearing Officer as set forth in § 4-4-9 of the
9 Municipal Code of the City of Albuquerque.

10 13. It is the intention of the City Council to adopt by reference and
11 incorporate into this Ordinance all of the definitions of terms set forth in the
12 Business Improvement District Act, N.M.S.A. 3-63-1 et seq.

13 14. It is the intention of the City Council to confer the broadest
14 discretion to the management committee to accomplish its goals, limited only
15 by the express terms of the Business Improvement District Act, N.M.S.A. 3-63-
16 1 et seq., as that State Statute now exists or may be revised, and upon the
17 further limitation that no ATMD service or improvement may duplicate
18 services or improvements provided by the City of Albuquerque.

19 15. The City Clerk, or his or her designee, is directed to take all
20 necessary actions to complete the establishment of the ATMD.

21 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
22 clause, word, or phrase of this ordinance is for any reason held to be invalid
23 or unenforceable by any court of competent jurisdiction, such decision shall
24 not affect the validity of the remaining provisions of this ordinance. The
25 Council hereby declares that it would have passed this ordinance and each
26 section, paragraph, sentence, clause, word, or phrase thereof irrespective of
27 any provision being declared unconstitutional or otherwise invalid.

28 SECTION 3. COMPILATION. Section 1 of this ordinance shall be
29 incorporated in and made part of the Revised Ordinances of Albuquerque,
30 New Mexico, 1994.

31 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days
32 after publication by title and general summary.

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