



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-21 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton and Brook Bassan

ORDINANCE

Ratifying The Levy Of A Business Improvement Benefit Fee Upon Lodging Businesses Within The Albuquerque Tourism Marketing District (Benton, Bassan)

RATIFYING THE LEVY OF A BUSINESS IMPROVEMENT BENEFIT FEE UPON LODGING BUSINESSES WITHIN THE ALBUQUERQUE TOURISM MARKETING DISTRICT.

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

WHEREAS, the City of Albuquerque adopted Ordinance O-22-14, attached herein as Exhibit A, authorizing the creation of the ATMD to promote the economic vitality of ATMD lodging businesses and the City of Albuquerque by providing additional tourism promotion services and improvements that are intended and designed to increase overnight visitation to ATMD lodging businesses and the City of Albuquerque; and

WHEREAS, the Business Improvement District Act, NMSA 1978, Section 3-63-14 requires the adoption of an Ordinance to ratify the levy of assessment within a business improvement district.

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

SECTION 1.

1. The initial period of existence for the ATMD shall be for a five (5) year period, from July

1, 2022, or as soon as possible thereafter, and end five (5) years from its start date.

2. The annual business improvement benefit fee rate is two percent (2%) of gross room rental revenue. Based on the benefit received, business improvement benefit fees will not be collected on: stays of more than thirty (30) consecutive days; stays pursuant to a written agreement for at least thirty (30) consecutive days; stays by any person to whom rent is charged at the rate of \$2.00 per day or less; stays at institutions of the federal government, the state or any political subdivisions thereof; stays at religious, charitable, educational, or philanthropic institutions, including without limitation stays at summer camps operated by such institutions; stays at clinics, hospitals, or other medical facilities; stays at privately-operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill; stays at any short term rental unit; and stays pursuant to contracts executed prior to July 1, 2022.

3. The City will be responsible for collecting the business improvement benefit fee on a monthly basis (including any delinquencies, penalties, and interest) from each lodging business located within the boundaries of the ATMD. The City shall make all reasonable efforts to collect the business improvement benefit fee from each lodging business.

4. Commencing from the last date of publication of this Ordinance, the ATMD shall reimburse the City of Albuquerque for any costs associated with collecting unpaid business improvement benefit fees. If sums in excess of the delinquent ATMD business improvement benefit fees are sought to be recovered in the same collection action by the City, the ATMD shall bear its pro-rata share of such collection costs. Assessed lodging businesses which are delinquent in paying the business improvement benefit fee shall be responsible for paying:

a. Original Delinquency: Lodging businesses shall make a return by the 25th of each month on forms provided by the City for lodging paid to the lodging business in the preceding calendar month and shall remit therewith to the City payment of the business improvement fee then due. The report shall include sufficient information to enable the City to audit the report. If the 25th day of the month falls on a weekend or holiday, the return shall be due on the next business day. If any lodging business makes a return without paying the business improvement benefit fee then due, the lodging business shall be liable for the business improvement benefit fee and a penalty equal to ten percent (10%) thereof or \$100, whichever is greater. After receiving such return, the City shall give the delinquent lodging business written notice of the business improvement benefit fee and penalty.

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

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

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

e. Lodging Business Disputes: A lodging business that disputes the assessment of any business improvement benefit fee or related penalties and interest may, within five (5) working days of the date of the notice from the City that the business improvement benefit fee is

delinquent, appeal the Mayor's decision to the City Hearing Officer as set forth in § 4-4-9 of the Municipal Code of the City of Albuquerque.

5. The businesses to be assessed a business improvement benefit fee for the ATMD are all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the commercial areas of the City of Albuquerque, as shown on the map attached hereto and incorporated by reference as "Exhibit B" of this Ordinance. "Lodging business" means: a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, bed and breakfast, guest ranch, ranch resort, mobile home, motor court, auto court, trailer court, trailer camp, tourist camp, cabin or other premises used for lodging.

6. The ATMD business improvement benefit fee shall be collected by the City of Albuquerque monthly, in accordance with Section IV of the District Plan. The City of Albuquerque shall retain a fee equal to one percent (1%) of the amount of business improvement benefit fees collected to cover its costs of collection and administration.

7. ATMD business improvement benefit fee funds received by the City of Albuquerque shall be held in a special account for the benefit of the ATMD and shall only be used for the purposes set forth in this Ordinance and the District Plan. The funds shall be distributed to the management committee on a monthly basis by providing the funds received monthly to the management committee within thirty (30) days of receipt, less the City of Albuquerque's one percent (1%) charge for its expense of assessing, collecting, and administering the ATMD business improvement benefit fee. All investment and expenditures shall be in accordance with the provisions of the ATMD District Plan.

8. Pursuant to NMSA Section 3-63-11, the City Council has appointed Visit Albuquerque, an existing nonprofit corporation operating within the boundaries of the district, to serve as the management committee for the ATMD. Visit Albuquerque shall be responsible for the operation of the ATMD and the administration and implementation of the District Plan.

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

SECTION 3. COMPILATION. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994 as a new Article to be added to Chapter 14, and titled "Ratifying the Levy of the Business Improvement Benefit Fee for the Albuquerque Tourism Marketing District."

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

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