CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-14 ENACTMENT NO. 0-2022-015

SPONSORED BY: Isaac Benton and Brook Bassan

ORDINANCE

ESTABLISHING A BUSINESS IMPROVEMENT DISTRICT, TO BE KNOWN AS 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 allocation of the City's lodgers tax revenues that is used for marketing and promoting the City of Albuquerque is insufficient to adequately market and promote the City to visitors and additional funds are needed to market and promote the City to visitors; and

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

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

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

WHEREAS, it would be appropriate to create the proposed 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.
BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:

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

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. Prior to the expiration of the ATMD’s initial term, the
City Council shall review the ATMD to determine whether it should remain in
existence and be renewed. If a majority of the City Council decides that the
purpose for which the ATMD was created has been served and that it is in the
best interest for the ATMD, the City Council shall terminate the ATMD’s status
by ordinance or resolution and record the ordinance or resolution with the
municipal clerk. If the City Council determines that the ATMD should remain
in existence, it may renew the ATMD for an additional five (5) year term.

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

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

4. The additional tourism promotion services and improvements to be
provided by the ATMD are intended and designed to increase overnight
visitation to and room sales at lodging businesses within the boundaries of
the ATMD. 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 A” 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.

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

6. The additional tourism promotion services and improvements to be
provided by the ATMD shall be funded by the levy of a business improvement
benefit fee on lodging businesses within the ATMD boundary, as
recommended by the Planning Group. The business improvement benefit fee
shall be levied on the basis of benefit to the ATMD lodging businesses.

Because the additional tourism promotion services and improvements to be
provided by the ATMD are intended to increase room rentals at ATMD lodging
businesses, a business improvement benefit fee based on room rentals is the
best measure of benefit. The annual business improvement benefit fee shall
be two percent (2%) of ATMD lodging businesses’ gross room rental revenue.
The total five (5) year improvement and service plan budget is projected at
approximately $4,800,000 annually, or $24,000,000 total over the term of the
ATMD. This amount may fluctuate as sales and revenue increase at assessed
lodging businesses. Furthermore, as calculation of the ATMD budget was
based on data collected prior to the COVID-19 pandemic, this amount may
fluctuate in accordance with post-COVID economic circumstances. Based on
the benefit received, business improvement benefit fees will not be levied 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.

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

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

9. 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.

10. Pursuant to NMSA Section 3-63-11, the City Council hereby appoints 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. Visit Albuquerque shall serve as the management committee for the five (5) year term of the ATMD unless removed earlier by the City Council. As the ATMD management committee, Visit Albuquerque shall do all of the following:

a. Prepare and file annually with the City Council for its review and approval a budget and progress report for the ATMD;

b. Administer all improvements within the ATMD;
c. Recommend the annual assessment to be made by the City Council; and
d. File annually with the City Council a report of the ATMD activities for
the preceding fiscal year, which report shall include a complete financial
statement setting forth its assets, liabilities, income, and operating expenses
as of the end of the fiscal year and the benefits of the ATMD's program to the
ATMD lodging businesses owners.

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

12. The ATMD shall reimburse the City 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. 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. Promptly after receipt of
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 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 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

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

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

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

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, Article '21', to be added to Chapter 14, and
titled "Albuquerque Tourism Marketing District Business Improvement
District."
SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.
PASSED AND ADOPTED THIS 21st DAY OF March, 2022
BY A VOTE OF: 9 FOR 0 AGAINST.

Isaac Benton, President
City Council

APPROVED THIS 4 DAY OF April, 2022

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Ethan Watson, City Clerk