CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-21 ENACTMENT NO. 0-2022-021

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.

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. 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

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.
PASSED AND ADOPTED THIS 16th DAY OF May, 2022
BY A VOTE OF: 9 FOR 0 AGAINST.

Isaac Benton, President
City Council

APPROVED THIS 31 DAY OF May, 2022

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:

Ethan Watson, City Clerk
Interoffice Memorandum

June 17, 2022

To: CITY COUNCIL

From: Camille Cordova, Assistant City Clerk

Subject: BILL NO. O-22-21; ENACTMENT NO. O-2022-021

I hereby certify that on June 17, 2022, the Office of the City Clerk received Bill No. O-22-21 as signed by the president of the City Council, Isaac Benton. Enactment No. O-2022-021 was passed at the May 16, 2022 City Council meeting. Mayor Keller did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect beginning June 24, 2022 without Mayor’s approval or signature. This memorandum shall be placed in the permanent file for Bill No. O-22-21.

Sincerely,

Ethan Watson
City Clerk