

ORDINANCE NO. 1721

AN ORDINANCE AMENDING ORDINANCE NO. 1675 THAT ESTABLISHED THE REGULATIONS FOR THE TOURISM BUSINESS IMPROVEMENT DISTRICT BY CREATING A CLASS OF ASSOCIATE MEMBERSHIP AND ESTABLISHING REGULATION THEREFORE, DECLARING AN EFFECTIVE DATE, AND AUTHORIZING THE CITY ATTORNEY TO CODIFY THE SAME.

WHEREAS, the Tourism Business Improvement District [TBID] was created by Resolution on May 3, 2010, pursuant to Title 7 Chapter 12 Part 11 and its regulations were created pursuant to Ordinance No. 1675 on May 17, 2010; and

WHEREAS, pursuant to requests by hotel properties outside of the District the duly elected trustees of the TBID have determined that it would be in the best interests of the District to accept associate memberships from those properties subject to certain terms; and

WHEREAS, the TBID Board of Trustees has determined the terms that should be incorporated in an Associate Membership Agreement as set forth in Exhibit "A" attached hereto; and

WHEREAS, the City Council has reviewed the recommendation of the TBID Board of Trustees as well as the terms proposed to regulate Associate Membership and find such recommendations to be in the best interests of the TBID and the City of Kalispell.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL AS FOLLOWS:

SECTION I. The Tourism Business Improvement District is hereby authorized to accept voluntary associate memberships from hotel properties located outside of the District on the terms of agreement as set in Exhibit "A", attached hereto and incorporated fully herein by this reference.

SECTION II. The City Attorney is hereby authorized and directed to recodify this Ordinance.

SECTION III. This Ordinance shall take effect thirty (30) days after its final passage.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL THIS 19TH DAY OF FEBRUARY, 2013.



Tammi Fisher
Mayor

ATTEST:



Theresa White
City Clerk

EXHIBIT "A"

REGULATION OF ASSOCIATE MEMBERSHIP TO THE TOURISM IMPROVEMENT DISTRICT

APPROVAL

TBID Associate Membership is available to lodging properties with a Kalispell physical address. A property receives approval as a TBID Associate Membership by the TBID Board of Directors. Requesting property submits a letter of request to the Kalispell Convention & Visitor Bureau outlining the property specifications and acknowledgement of the terms of the Kalispell TBID Associate Member contract and TBID Bylaws. That request is then submitted to the TBID Board of Directors for approval at the next available scheduled monthly Board meeting. Contract is signed by the TBID Chairman of the Board and returned to requesting property for signature by property owner.

TERMS OF AGREEMENT

Term: Effective the date of signed contract and remain in force until the end of the established district (June 30, 2020) or until ownership change. Upon a change of property ownership new owner reapplies within 30 days of taking over. If application is not received within 30 days, property is removed from all TBID marketing. If the new owner chooses to submit a request for Associate Membership, the TBID Reinstatement policy takes effect.

Termination without Cause: Penalty for early termination - \$5,000 – For purposes of marketing costs recoupment.

Termination with Cause: Either party may terminate this Agreement, for cause, if either Party notifies the other Party of a material breach of any provision of the Agreement. The breaching Party shall have thirty (30) days following notice to cure the breach. The notice shall specify the alleged breach and the date on which termination will be effective unless such breach is cured to the satisfaction of the non-breaching Party within the time period allowed.

BENEFITS

TBID agrees to promote the subject property equally to the TBID members within the established district in marketing initiatives produced with TBID funds. This includes DiscoverKalispell.com, Kalispell visitor guide, social media platforms, e-marketing, online marketing, group/meeting and convention RFPs, and opportunities to promote lodging packages or other initiatives determined by KCVB and TBID.

TBID BOARD OF DIRECTORS

Kalispell TBID Associate Members may serve as ex-officio non-voting board members and attend the monthly TBID board of directors meetings.

CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

During the term of the Agreement, the Parties anticipate that certain information and intellectual property will be developed for the purposes of the Chamber/CVB and the TBID's mission and activities. Said confidential information and intellectual property includes, but is not limited to, databases, lists, customer lists, financial and proprietary information, concepts, documents, materials,

trade secrets, business contacts, and ideas about current and future projects which the Chamber/CVB or TBID regards as confidential.

INDEMNIFICATION

The TBID and the associate member will agree to indemnify the other party for any damages caused to the indemnified party by the negligent action of the indemnifier.

SPOKESPERSON

Only the Chair of the Board, the Executive Director, or their designee shall have authority to speak on behalf of, or to issue press releases for, the Board of the TBID.

PAYMENT

TBID Associate Members shall abide by the TBID General Payment Instructions and Payment Reporting Form. Payments are made quarterly to the City of Kalispell. Payment and reporting form must be received or postmarked on the last day of the reporting quarter. The instructions and reporting form shall be attached as Addendum A.

Delinquent Payment (as stated in the Kalispell TBID By-Laws): Any lodging facility that fails to file a required payment and reporting form with Kalispell City Treasurer by the due date will be assessed a late filing penalty of \$50 and a penalty of .83% a month or a fraction of a month on the unpaid TBID fees. Penalty may not exceed 10% of the amount due. The penalty accrues on the unpaid TBID fees from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return. The bylaws shall be attached as Addendum B.

Reinstatement: If payment is not made within 10 days of due date, the subject property will be removed from all TBID marketing. A penalty of \$2,500 will be charged to reinstate subject property into TBID marketing materials. This reinstatement will commence upon receipt of full payment of quarterly collections, any accrued delinquent payment fees and \$2,500 reinstatement fee to the City of Kalispell.

Failure to Collect and Report (as stated in the Kalispell TBID By-Laws): If any lodging facility fails or refuses to collect the assessment and to make, within the time provided for report and remittance of the assessment or any portion thereof required, the TBID Board of Directors will issue a certified letter to the facility instructing that if payment and reporting form are not received in 10 days from receipt of the letter, the Kalispell City Treasurer will be notified and the following collection process will be executed:

- A. Kalispell City Treasurer shall proceed in manner which assumes full occupancy for all rooms of the hotel property for the purpose of estimating the base upon which to calculate the assessment due. The Kalispell City Treasurer shall proceed to determine and assess against such lodging facility, the assessment and penalties.
- B. In case such determination is made, the Kalispell City Treasurer shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the lodging facility so assessed at its last known place of address. Such lodging facility may, within 10 days after the serving or mailing of such notice, make application in writing to the Kalispell City Treasurer for a hearing on the amount assessed.

- C. If application by the lodging facility for a hearing is not made within the time prescribed, the assessment, and penalties, if any, determined by the Kalispell City Treasurer, shall become final and conclusive and immediately due and payable. If such application is made, the Kalispell City Treasurer shall give not less than five days' written notice to the lodging facility, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such assessment and penalties.

- D. At such hearing, the lodging facility may appear and offer evidence why such specified assessment and penalties should not be so fixed. After such hearing, the Kalispell City Treasurer shall determine the proper assessment to be remitted, and shall thereafter give written notice to the lodging facility in the manner prescribed herein of such determination and the amount of such assessment and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken.