

Ordinance No. 597

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIDNEY, MONTANA, CREATING TITLE 5, CHAPTER 12, OF THE CITY CODE OF THE CITY OF SIDNEY, MONTANA.

**Title 5, Chapter 12
TOURISM BUSINESS IMPROVEMENT DISTRICT**

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- 5.12.010 Findings and purpose.**

Whereas, on October 4, 2022, the City of Sidney passed a resolution of intent to extend the duration of the Tourism Business Improvement District originally enacted in 2012; and,

Whereas notice was given to all property owners in the district, and insufficient protest was made by these property owners to prevent the extension of the proposed district,

Now, therefore, it is the purpose of this chapter to provide for the extension, for a period of ten years from DATE, of a tourism business improvement district within the city with the further purpose to aid in tourism, promotion, and marketing within the district.

In extending this business improvement district, it is the intention of the City Council that the purpose of the district is to promote tourism to the City of Sidney. To that end, the board of trustees established hereunder is specifically directed to use the assessments of the district to fund community activities which promote tourism and commerce.

5.12.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, motel, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms, or any portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. "Person" means any individual, firm, partnership, association, social club, fraternal organization, or any other group or combination acting as a unit.

D. "Transient" means any person who exercises occupancy or is entitled to occupancy or other agreement for a period of thirty consecutive calendar days or less. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired, unless there is an agreement in writing between a hotel and the occupant providing for a longer period of occupancy.

E. "Board of trustees" means the board, appointed by the city council, composed of not less than five or more than seven owners of property within the district or their assignees, that is responsible for developing an annual budget and work plan for the district.

F. All references to the "tourism business improvement district assessment" and "assessment" in this chapter shall refer to the tourism business improvement district passed by the required number of property owners in the City of Sidney as specified in Section 7-12-1101, MCA and as enacted by the ordinance codified in this chapter.

5.12.030 Imposed.

There is imposed a duty on each operator of any of the establishments mentioned in this chapter to collect, upon sale, the assessment as set forth in this chapter.

5.12.040 Tourism business improvement district assessment.

There is imposed an assessment of one dollar and fifty cents per occupied room night upon all hotels within the boundaries of the tourism business improvement district.

5.12.050 Boundaries.

The boundaries of the tourism business improvement district shall be noncontiguous and shall include all hotels within the established limits of the City of Sidney as such limits are amended from time to time, including the following lands set forth as follows:

Hotel Name	Hotel Address	Legal Description
Best Western Golden Prairie Inn & Suites	820 S Central Ave, Sidney, MT 59270	S33, T23 N, R59 E, C.O.S. 27-648, PARCEL 2, ACRES 1.37, IN NESW
Holiday Inn Express & Suites Sidney, and IHG Hotel	251 W Holly St, Sidney, MT 59270	RICHLAND FEDERAL CREDIT UNION MINOR SUB, S28, T23 N, R59 E, ACRES 1.97
Microtel Inn & Suites by Wyndham, Sidney	1500 S Central Ave, Sidney, MT 59270	S05, T22 N, R59 E, C.O.S. 27-947, PARCEL 2A, ACRES 1.916
Wingate by Wyndham, Sidney	1490 S Central Ave, Sidney, MT 59270	S05, T22 N, R59 E, C.O.S. 27-947, PARCEL 1A, ACRES 1.7981
Candlewood Suites Sidney, and IHG Hotel	201 6th St. NW, Sidney, MT 59270	AUGUSTUS VAUX SUBDIVISION, S28, T23 N, R59 E, BLOCK 001, Lot 09A
MainStay Suites Sidney	1000 3rd St NW, Sidney, Montana 59270	NORTHVIEW SUB, S29, T23 N, R59 E, BLOCK 002, Lot 002
Richland Inn & Suites	1200 South Central Ave, Sidney, MT 59270	S32, T23 N, R59 E, 2.33 AC IN SESE 32-2359
Lone Tree Motor Inn	900 S. Central Ave., Sidney, MT 59270	S33, T23 N, R59 E, .98 AC IN NWSW LONE TREE MOTEL

5.12.060 Rate--Duration.

A. The rate of the tourism business improvement district assessment is one dollar and fifty cents per occupied room night.

B. The period of duration of the tourism business improvement district shall not be for a period of longer than ten years unless the duration of the district is extended in compliance with the provisions of 7-12-1111, MCA. The effective date of the tourism business improvement district assessment is DATE, and assessments shall be collected on all occupied rooms from that date

forward.

5.12.070 Tourism business improvement district assessment payment.

The tourism business improvement district assessments collected by a hotel in any month are to be paid to the city on the date set by the board of trustees, or if such day falls on a Saturday, Sunday, or holiday, then on the next business day. Tourism business improvement district assessment payments sent by mail or private courier must be received by the city on or before the date set by the board of trustees.

5.12.080 Collection duties and responsibilities.

- A. The office responsible for receiving and accounts for the tourism business improvement district assessment receipts is the city treasurer's office.

- B. The city attorney shall be responsible for enforcing the collection of tourism business improvement district assessments and shall be responsible for overseeing the methods and procedures to be used in enforcing the collection of the tourism business improvement district assessments. Any costs of such enforcement shall be born by the tourism business improvement district.

5.12.090 Records and forms.

The board of trustees shall provide each hotel that is required to collect tourism business improvement district assessments with the proper forms for reporting and making payment to the city. Tourism business improvement district assessment payments to the city shall be tabulated and accounted for on forms prescribed and furnished to the hotel by the city. Each hotel that is required to collect tourism business improvement district assessments must maintain adequate accounting records and pay the tourism business improvement district assessments to the city on the forms provided by the date set by the board of trustees. The accounting records maintained must be accurate, verifiable, and provide a reasonable audit trail. Failure to maintain adequate accounting records constitutes a violation of this chapter.

5.12.100 Preservation of records.

Every hotel required to collect and pay tourism business improvement district assessments shall keep and preserve for a period of not less than three years all records necessary to determine the accuracy of the assessments paid, and shall make these records available for audit or inspection on its business premises at all reasonable times. Any audit or inspection shall be conducted in the City of Sidney on the premises of the business or establishment collecting the tourism business improvement district assessments or at such other location as the city may determine.

5.12.110 Appeals.

Any hotel may appeal to the city council any assessment of penalty or interest; provided, that notice of appeal in writing is filed with the city clerk within thirty days of the serving or mailing of the determination of the amount of penalty and interest due. The city council shall on the next immediate regular city council meeting fix the time and place for hearing the appeal and the city clerk shall cause notice in writing to be personally served by a peace officer upon the operator.

The findings and decision of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing or by certified mail directed to the hotel operator's last known address. Any amount found to be due shall be immediately payable upon service of the findings and decision.

5.12.120 Administration and use of tourism business improvement district assessment moneys.

A. The city council shall by resolution appoint a board of trustees of five persons to administer the tourism improvement district. The board of trustees will be composed of the owners of the hotels in the district or their designees. The procedure for appointment shall be as follows: during any vacancy, or upon the renewal of the district by this ordinance, any owner of the district may request appointment to the board of trustees by notifying the City Clerk of the owner's willingness to serve on the board of trustees, and providing the name of the owner's designee, if any. The City Council shall appoint the board of trustees from among the these owners. If there are less than five owners requesting appointment, the Mayor may nominate sufficient owners to ensure that there are five members. After initial appointment, members must be appointed for a term of office of four years, except that a vacancy occurring during a term must be filled for the unexpired term. A member holds office until a successor has been appointed and qualified.

B. The powers of the board of trustees in administering the district shall be as prescribed in 7-12- 1131, MCA. The board of trustees shall establish policies and procedures for the operation and general management of the district.

C. An Executive Director of the TBID shall be appointed by the City of Sidney. The Executive Director must be the executive director of a nonprofit convention and visitor bureau, as defined in 15-65-101, M.C.A., if a nonprofit convention and visitors bureau is operating within the Governing Body's jurisdiction. The Executive Director shall be charged with the general supervision and management of the business affairs of the TBID. The Executive Director shall be the chief executive officer and shall be charged with initiating and implementing the marketing plan, budget and related projects, the general supervision over employees, including their duties and compensation in conformity with the policies approved by the Board. The Executive Director shall keep the minutes of the Board meetings, keep other records as the Board may direct, and perform such other duties as may be prescribed by the Board, these Bylaws, or by law. The Executive Director shall so manage the affairs of the TBID as to promote the objectives for which the TBID is organized.

D. The board of trustees shall submit the annual budget and work plan for the district to the city council for approval during the annual budget preparation process, as directed by the City Treasurer.

E. In distributing the assessments collected within the district, the board of trustees shall use the assessment for the following purposes:

- (a) The funding of uses and projects for tourism promotion and management within the City of Sidney;
- (b) The marketing of events that benefit local tourism and commerce in the

- City of Sidney; and
- (c) The marketing of Sidney to the travel industry to benefit local tourism and commerce located within the City of Sidney

E. The direct payment of assessment funds to any hotel within the TBID is prohibited.

F. In the event that the TBID ceases to exist for any reason, any unspent assessment monies shall become property of the City of Sidney, and shall be placed in the general fund of the City. In assessments due and owing at the time the TBID ceases to exist shall become an obligation owed to the City of Sidney.

5.12.130 Tourism business improvement district assessment administration.

The city shall administer tourism business improvement district assessment collections according to the following rules:

A. The city will withhold an amount set by the City every month to offset the costs related to administering the tourism business improvement district. The city's withholding will be transferred to the general fund.

B. The city will transfer the funds collected by the city during a given quarter, less the withholding detailed above, to a fund administered by the board of trustees.

C. Tourism business improvement district assessment payments shall be made to the city treasurer's office by the established deadline.

D. Any hotel that fails to file a required return, statement, or other report with the city by the due date, including any extension of time of the return or report, will be assessed a late filing penalty of fifty dollars or the amount of the tax due, whichever is less.

E. Any hotel that fails to remit the tourism business improvement district assessments when due must be assessed a late payment penalty of one percent a month, or a fraction of a month, on the unpaid tourism business improvement district assessments. The penalty may not exceed twelve percent of the amount due. The penalty will accrue on the unpaid tourism business improvement district assessments from the original date of the return regardless of whether the hotel operator has received an extension of time for filing a return.

5.12.140 Obligations of the district.

An obligation or debt of any nature of the district is not an obligation or debt of the City of Sidney and in no event is a debt or obligation of the district payable out of any funds or properties of the City of Sidney. The debts and obligations of the district are payable solely from the funds and properties of the district.

5.12.150 Violation--Civil penalties.

For failure to report tourism business improvement district assessments when due, failure to pay tourism business improvement district assessments when due, and other violations of this chapter, the city may seek the following penalties or remedies:

- A. A court judgment in the amount of all unpaid tourism business improvement district assessments, including any unpaid administrative fees assessed under this chapter;
- B. A civil penalty in the amount of fifty percent of the unpaid tourism business improvement district assessments, plus all costs and attorney's fees incurred by the city in any court action;
- C. An order requiring the delinquent hotel to undergo a financial audit by the city or its representatives to determine the proper amount of tourism business improvement district assessments due, including payment by the business of all audit costs and expenses incurred by the city or its representatives;
- D. An injunction preventing the hotel from operating as a hotel until such time as all unpaid tourism business improvement district assessments have been paid.
- E. Any hotel owner who, whether personally or by a designee, serves as a member of the board of trustees and fails to pay any assessment when due shall be barred from voting on any issue before the board of trustees. Notice of the failure to pay shall be provided by the presiding officer of the board. This notice shall state that unless the assessments are paid within thirty days, the board member shall be barred from voting on any issue before the board of trustees. If the assessment has not been paid within ninety days of the notice set forth above, that board member is automatically removed from the position and the vacancy shall be filled by appointment by the city council.
- F. Any other penalty, remedy or judicial relief to which the city is entitled.

5.12.160 Violation--Municipal infraction.

Violation of this chapter shall be punishable as a municipal infraction in accordance with Chapter 3, Section 1 of the Code of Ordinances of the City of Sidney.