

ORDINANCE NO. 6174

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANAHEIM AMENDING TITLE 2 OF THE ANAHEIM MUNICIPAL CODE BY ADDING A NEW CHAPTER 2.14, SECTIONS 2.14.010 ET SEQ., RELATING TO THE ESTABLISHMENT OF TOURISM IMPROVEMENT DISTRICTS

WHEREAS, in order to retain and expand the City's tourism industry, in the face of increasing marketing activities from competing venues and destinations, it is necessary to undertake extensive marketing activities and programs promoting the City as a tourist and convention destination; and

WHEREAS, the City's Transient Occupancy Tax ("TOT") provides an important but limited amount of resources toward the marketing activities necessary to sustain the City's tourism and convention market share; and

WHEREAS, the City Council of the City of Anaheim ("City Council") finds that it is in the public interest and vital to the welfare of the City's economy to expand the funding for tourism through a cooperative partnership funded by the hospitality industry; and

WHEREAS, the Council recognizes that smaller businesses in the City's tourism and convention industry often lack adequate resources or the market power to conduct these marketing and promotional activities on their own; and

WHEREAS, the marketing programs to be created under this Chapter are intended to be of benefit to all tourism related businesses, including smaller businesses, paying the assessments to be levied should a Tourism Improvement District be established; and

WHEREAS, the impetus for this Chapter arose out of a cooperative partnership between the Anaheim Orange County Visitor and Convention Bureau, the Anaheim/Orange County Hotel & Lodging Association, other tourism and convention industry representatives, and the City; and

WHEREAS, it is the desire of the City Council to create a mechanism, as provided for under State law, to allow certain businesses within the tourism industry to initiate an assessment for the purpose of enhancing the marketing of the City and surrounding areas as a tourist and convention destination through a Tourism Improvement District; and

WHEREAS, such an assessment district, should it be created, would be operated under the general supervision and oversight of the City, and said district would operate under a City Council-approved management plan

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM HEREBY ORDAINS AS FOLLOWS:

## SECTION 1.

That Title 2 of the Anaheim Municipal Code is hereby amended by adding a new Chapter 2.14 titled, "Anaheim Tourism Improvement District Formation Code," and new sections therein to read as follows:

### **2.14 CITY OF ANAHEIM TOURISM IMPROVEMENT DISTRICT FORMATION.**

#### **2.14.010 RELATIONSHIP TO OTHER LAWS.**

.010 This ordinance provides an alternative method of financing certain tourism related programs, improvements and activities. The provisions of this ordinance shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code Sections 36500-36551) or the Property and Business Improvement District Law of 1994 (California Streets and Highways Code Sections 36600-36671) is valid and effective and is unaffected by this chapter. Any provision of this chapter which conflicts with any of the above-referenced provisions of law shall prevail over such other provisions of law.

.020 This chapter is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. If the provisions of this chapter respecting the levying of assessments are held invalid in any area within which assessments have been levied pursuant to the resolution of formation and assessment methodology adopted in accordance with Section 2.14.090, the assessments shall be reimposed in an identical amount and upon the same businesses as a matter of law and no lapse in the levy of any assessment shall be deemed to have occurred. Assessments levied under this chapter are not general or special taxes.

#### **2.14.020 DEFINITIONS.**

.010 "Activities" means, but is not limited to, all of the following:

- .011 Promotion of public events which benefit businesses or real property in the district.
- .012 Furnishing of music or entertainment in any public place within the district.
- .013 The international and national promotion of tourism and use of the Anaheim Convention Center within the district.
- .014 Marketing and economic development, including retail retention and recruitment.

.020 "Advisory Board" means the advisory board designated by the City Council pursuant to Section 2.14.150.

.030 "Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the businesses located and operating within a tourism improvement district.

.040 "Business" means all types of businesses that benefit from the establishment of a Tourism Improvement District.

.050 "City" means the City of Anaheim.

.060 "City Council" means the City Council of the City of Anaheim.

.070 "Contracting Entity" means the organization with which the City contracts to handle the day-to-day operations of the TID and implementation of the management plan.

.080 "Improvement(s)" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five (5) years or more including, but not limited to, the following:

.081 Parking facilities.

.082 Transportation systems that deliver customers and patrons to the TID hotels, the Anaheim Resort Area, the Platinum Triangle, and the Anaheim Convention Center.

.083 Benches, booths, kiosks, display cases, pedestrian shelters and signs.

.084 Trash receptacles and public restrooms.

.085 Lighting, heating and cooling facilities.

.086 Decorations.

.087 Parks and plazas.

.088 Fountains.

.089 Planting areas (including parkways and median strips).

.090 Closing, opening, widening, or narrowing of existing streets.

.091 Facilities or equipment, or both, to enhance security of persons and property within the area.

.092 Ramps, sidewalks, plazas, and pedestrian malls.

.093 Rehabilitation or removal of existing structures.

.094 Convention center facilities.

.090 "Property" means real property in and around TID businesses located within proposed TID boundaries.

.100 "Tourism improvement district," or "district," or "TID" means an area designated as provided in this chapter.

#### **2.14.030 ESTABLISHMENT OF A TOURISM IMPROVEMENT DISTRICT.**

.010 A tourism improvement district may be established as provided in this chapter.

.020 The City Council may establish a district on its own initiative or upon petition of one or more businesses.

.030 The City may not form a district within the unincorporated territory of a county, without the consent of the board of supervisors of that county. The City may not form an area within the territorial jurisdiction of another city without the consent of the city council of the other city.

#### **2.14.040 RESOLUTION OF INTENTION.**

.010 Proceedings to establish a tourism improvement district shall be instituted by the adoption by the City Council of a resolution of intention to establish the district. The resolution of intention shall do all of the following:

.011 State that a tourism improvement district is proposed to be established pursuant to this Chapter 2.14 and describe the boundaries of the territory proposed to be included in the district and the boundaries of each separate benefit zone to be established within the district. The boundaries of the district may be described by reference to a map on file in the office of the city clerk, showing the proposed district.

.012 State the name of the proposed district.

.013 State the type or types of improvements and activities proposed to be funded by the levy of assessments on businesses in the district including any improvements to be acquired, and the percentages of assessment revenues to be allocated for improvements and for activities, respectively.

.014 State that an assessment will be levied monthly to pay for all improvements and activities within the district.

.015 State (a) the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business and/or (b) a set assessment amount to be levied against each business.

.016 State the duration of the district which shall not exceed thirty (30) years. Notwithstanding this limitation, a district created pursuant to this chapter that finances

authorized improvements with bonds, pursuant to Section 2.14.130, shall be subject to a levy of assessments until the maximum maturity of the bonds.

.017 State whether bonds will be issued pursuant to Section 2.14.130 and for what purposes.

.018 Fix a time and place for a public hearing on the establishment of the tourism improvement district and the levy of assessments, which shall be consistent with the requirements of Section 54954.6 of the Ralph M. Brown Act (California Government Code Sections 54950-54963).

.019 State that at the hearing the testimony of all interested persons for or against the establishment of the district, the extent of the district, or the furnishing of specified types of improvements or activities will be heard. The notice shall also describe, in summary, the effect of protests made by business owners against the establishment of the district, the extent of the district, and the furnishing of a specified type of improvement or activity.

#### **2.14.050 MANAGEMENT PLAN.**

010. The City shall have prepared a management plan for the ATID which shall be provided to all businesses to be assessed no later than ten (10) days prior to the hearing on the resolution of formation. Such management plan shall include all of the following:

.011 A map of the district in sufficient detail to locate each assessed business within the district.

.012 The name of the proposed district.

.013 A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected businesses included.

.014 The improvements and activities proposed for the first five (5) years of operation of the district and the maximum cost thereof.

.015 The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each of the first five (5) years of operation of the district.

.016 The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each affected business owner to calculate the amount of the assessment to be levied against his or her business. The plan also shall state whether bonds will be issued to finance improvements.

.017 The time and manner of collecting assessments.

.018 The specific number of years in which assessments will be levied.

.019 The proposed time for implementation and completion of the management plan and whether or not an Advisory Board will be designated for the district pursuant to Section 2.14.150.

.020 Any proposed rules and regulations to be applicable to the district.

.021 A list of the businesses to be assessed.

.022 The structure governing implementation of the management plan.

.023 A description of the Contracting Entity with which the City will contract for day-to-day management of the TID.

.024 All required cost recovery information specified in Section 2.14.130.020.

#### **2.14.060 NOTICE OF PUBLIC HEARING.**

Notice of a public hearing held under Section 2.14.080 shall be given by the mailing of a complete copy of the resolution of intention by first-class mail to each business owner in the district that will be subject to the assessment, within seven (7) days of the City Council's adoption of the resolution of intention.

#### **2.14.070 PROTESTS.**

.010 At the public hearing, the City Council shall hear and consider all protests against the establishment of the district, the extent of the district, or the furnishing of specified types of improvements or activities within the district. A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.

.020 Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The City Council may waive any irregularity in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

.030 Each written protest shall contain a description of the affected business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest.

.040 If written protests are received from the owners of businesses in the proposed area which are projected to pay 50 percent (50%) or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than that 50 percent (50%), no further proceedings to create the specified tourism improvement district or to levy the proposed assessment, as contained in the resolution of intention, shall be taken for a period of one (1) year from the date of the finding of a majority protest by the City Council. In order to determine the

projected assessments for purposes of establishing voting percentages, the City shall make projections based on the prior three-year average of revenues for the applicable businesses. Since such information is proprietary, the City, alone, will determine the total percentage protest and provide such at the hearing on the resolutions of formation.

.050 If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the district, those types of improvements or activities shall be eliminated.

**2.14.080 CITY COUNCIL ADOPTION, REVISION OR MODIFICATION OF ASSESSMENTS; MODIFICATION OF APPROVAL OF CHARTER; CHANGES TO DISTRICT BOUNDARIES.**

.010 At the conclusion of the public hearing to establish the district, the City Council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments.

.020 At the public hearing, the City Council may only make changes in, to, or from, the boundaries of the proposed tourism improvement district that will exclude territory which will not benefit from the proposed improvements or activities. However, proposed assessments may only be revised by reducing any or all of them.

.030 The City Council shall not change the boundaries of the district to include any territory that will not, in its judgment, benefit by the improvement or activity. Any addition of territory to the proposed boundaries of the district may be made only upon notice to the owners of the businesses proposed to be added to the area, as provided in Section 2.14.060, and upon a public hearing on the addition of territory, as provided in subsection 2.14.040.018.

.040 The adoption of the resolution of formation pursuant to Section 2.14.090 shall constitute the levy of an assessment in each of the fiscal years for the duration of the tourism improvement district.

**2.14.090 RESOLUTION OF FORMATION FOR TOURISM IMPROVEMENT DISTRICT.**

.010 If the City Council, following the public hearing, decides to establish the proposed tourism improvement district, it shall adopt a resolution of formation to that effect. The resolution shall contain all of the following:

.011 A brief description of the proposed activities and improvements, the amount of the proposed assessment, the percentages of assessment revenues to be allocated for improvements and for activities, respectively, and a statement about whether bonds will be issued. The descriptions and statements do not need to be detailed and shall be sufficient if they enable the business owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

.012 The time and place where the public hearing was held concerning the establishment of the district.

.013 A determination regarding any protests received at the public hearing.

.014 The description of the boundaries of the district and of each separate benefit zone established within the district.

.015 A statement that a tourism improvement district has been established and the name of the district.

.016 A statement that the businesses in the district established by the resolution of formation shall be subject to any amendments to this chapter.

.017 The description of the method and basis of levying the assessments, with a breakdown by classification of businesses if a classification is used, and/or a set assessment amount to be levied against each business.

.018 A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the district.

.019 A finding that the businesses to be assessed within the tourism improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied. Only tourism improvement district businesses that benefit from tourist visits may be assessed.

.020 The time and manner of collecting the assessments.

.021 A copy of the management plan.

#### **2.14.100 BENEFIT ZONES.**

.010 The City Council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone.

.020 All provisions of this chapter applicable to the establishment, modification, or disestablishment of a tourism improvement district apply to the establishment, modification, or disestablishment of benefit zones. The City Council shall, to establish, modify, or disestablish a benefit zone, follow the procedure to establish, modify, or disestablish a tourism improvement district.

#### **2.14.110 RELATIONSHIP OF ASSESSMENT TO BENEFITS.**

The assessments levied on businesses pursuant to this chapter shall be levied on the basis of the estimated benefit to the businesses within the tourism improvement district. The City



Council may classify businesses for purposes of determining the benefit to a business of the improvements and activities provided pursuant to this part.

#### **2.14.120 CONTESTING THE LEVY OF ASSESSMENTS OR RESOLUTIONS**

The validity of a Resolution of Intention, a Resolution of Formation or an assessment levied under this chapter shall not be contested in any action or proceeding unless the action or proceeding is commenced within thirty (30) days after the resolution of formation levying the assessment is adopted pursuant to Section 2.14.090. Any appeal from a final judgment in an action or proceeding shall be perfected within thirty (30) days after the entry of judgment.

#### **2.14.130 COST RECOVERY.**

.010 The City Council may authorize a district formed pursuant to this ordinance to recover through the assessments, the cost incurred in formation of the district, including:

.011 The cost of preparation of the management plan.

.012 The cost of printing, advertising, and the giving of published, posted, or mailed notices.

.013 Compensation of any attorneys or other consultants employed to render services related to the formation of any district including proceedings under this ordinance.

.014 Any other costs associated with the formation of the district.

.020 If a district is authorized to recover these costs, any management plan prepared pursuant to subsection 2.14.050 shall specify the formation costs eligible for recovery through assessments, the schedule for recovery of those costs, and the basis for determining the amount of the additional assessment for recovery of costs.

#### **2.14.140 BOND FINANCING.**

.010 The City Council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 2.14.090, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or, if appropriate, in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the City Council as necessary to accommodate assessments levied upon business pursuant to this chapter.

.020 The resolution adopted pursuant to Section 2.14.040 shall generally describe the proposed activities or improvements specified in the resolution of formation adopted pursuant to Section 2.14.090, set forth the estimated cost of those improvements, specify the number of installments and the fiscal years during which they are to be collected. The amount of debt

service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over thirty (30) years.

.030 Notwithstanding any other provision of this chapter, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

#### **2.14.150 ADVISORY BOARD; ANNUAL REPORT.**

.010 The City Council may designate an Advisory Board that shall make recommendations to the City Council regarding the expenditure of revenues derived from the levy of assessments pursuant to this chapter, the classification of businesses, as applicable, and the method and basis of levying the assessments. The City shall enter into a contract with an organization ("Contracting Entity") to provide for day-to-day management of any activities, services and advertising (not improvements) authorized to be funded with the assessments.

.020 The Advisory Board or Contracting Entity shall cause to be prepared a report for each City fiscal year, except the first year or portion thereof, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the tourism improvement district or any benefit zones within the district, the basis and method of levying the assessments, any changes in the classification of property, including any categories of business, if a classification is used, the management plan, and the activities and improvements to be funded by the assessments.

.030 The report shall be filed with the clerk and shall refer to the tourism improvement district by name, specify the fiscal year to which the report applies, and shall contain all of the following information:

.031 Any proposed changes in the boundaries of the tourism improvement district, any benefit zones, classification of businesses, the basis and method of levying assessments, the management plan or the activities and improvements to be funded by the assessments.

.032 The improvements and activities to be provided for that fiscal year.

.033 An estimate of the cost of providing the improvements and the activities for that fiscal year.

.034 The method and basis of levying the assessment in sufficient detail to allow each business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

.035 The amount of any surplus revenues to be carried over from a previous fiscal year.

.036 The amount of any contributions to be made from sources other than assessments levied pursuant to this chapter.

.040 The City Council may approve the report as filed by the Advisory Board or Contracting Entity or may modify any particular contained in the report and approve it as modified. Any modification whether proposed by the Advisory Board, the Contracting Entity or the City, shall be made subject to a public hearing with public notice consistent with Section 2.14.060 and subject to the protest provisions in Section 2.14.070. The City Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

#### **2.14.160 RENEWAL.**

.010 Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.

.020 Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional businesses not included in the prior district, the remaining revenues shall be spent to benefit only the businesses in the prior district. If the renewed district does not include businesses included in the prior district, the remaining revenues attributable to these businesses shall be refunded to the owners of these businesses.

.030 Upon renewal, a district shall have a term not to exceed thirty (30) years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

#### **2.1.4.170 DISESTABLISHMENT.**

.010 Any district established or extended pursuant to the provisions of this chapter, where there is no indebtedness, outstanding and unpaid or outstanding contract, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the City Council in either of the following circumstances:

.011 If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

.012 During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin five (5) years after the date of establishment of the district or such other time as set forth in the management plan and shall continue for thirty (30) days. The next such 30-day period shall begin six (6) years after the date of the establishment of the district or such other time as set forth in the management plan. Each successive year of operation of the district shall have such a 30-

day period. Upon the written petition of the owners of businesses in the TID who pay 50 percent (50%) or more of the assessments levied, the City Council shall pass a resolution of intention to disestablish the district. The City Council shall notice a hearing on disestablishment.

.020 The City Council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to each affected TID business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than thirty (30) days after mailing the notice to the property or business owners. The public hearing shall be held not more than sixty (60) days after the adoption of the resolution of intention.

.030 Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded pro rata to the owners of TID businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished.

.040 If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

.050 Notwithstanding the above, if there is indebtedness or outstanding contracts, the assessment may not be terminated for such indebtedness or contract but may be permanently or temporarily terminated or otherwise reduced with respect to all other improvements and activities if the above steps are taken upon the written petition of the owners of businesses in the TID who paid 50 percent (50%) or more of the assessments in the preceding fiscal year.

## SECTION 2. SEVERABILITY

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence or word of this ordinance of the Code, hereby adopted, be declared for any reason to be invalid, it is the intent of the Council that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the 20th day of July, 2010, and thereafter passed and adopted at a regular meeting of said City Council held on the 27th day of July, 2010, by the following roll call vote:

AYES: Mayor Pringle, Council Members Sidhu, Hernandez, Galloway, Kring

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

CITY OF ANAHEIM

By: 

MAYOR OF THE CITY OF ANAHEIM

ATTEST

  
CITY CLERK OF THE CITY OF ANAHEIM