

Chapter 20

Finance

Article XIII. TOURISM IMPROVEMENT DISTRICTS

Sec. 20-401 Council Findings.

It is the policy of the City that districts be organized under this Article XIII to provide improved, enhanced, additional, or otherwise unavailable tourism-related facilities and services that are over-and-above the facilities and services that are regularly provided by the City. The City declares that the organization of tourism improvement districts within the City and County of Denver having the purposes and powers provided in this Article XIII will serve a public purpose, including but not limited to the City's interest in promoting economic development; will promote the health, safety, prosperity, security, and general welfare of the inhabitants and patrons thereof, the property owners therein, and all the people of the City; and will be of special benefit to the Lodging Businesses within the boundaries of any district created pursuant hereto. The Council has determined that the city is empowered to create tourism improvement districts under its plenary home rule authority over matters of local and municipal concern, as authorized by Article XX, Section 6 of the Colorado Constitution.

Sec. 20-402 General Power to Create Tourist Improvement Districts.

The City authorizes the organization of tourism improvement districts conferring special benefits upon Lodging Businesses within such districts and general benefits to the City and County at large under the provisions of this Article XIII in order to fund Tourism Improvements and Services.

Sec. 20-403 Legal Status of Tourism Improvement Districts.

Any tourism improvement districts created under this Article XIII shall be deemed a body corporate and politic, and a "district" within the meaning of Art. X, Sec. 20(2)(b) of the Colorado Constitution, a unit of local government distinct and separate from the city itself. As a legal entity created entirely through an exercise of the city's home rule authority, tourism improvement districts shall not be considered political subdivisions of the state. Although legally distinct from the city and not a department or agency of the city, tourism improvement districts may be considered a component unit of the city for purposes of budgeting, accounting, auditing, and financial reporting. However, multiple-fiscal year financial obligations of a tourism improvement district shall not be considered obligations of the City, notwithstanding reporting as a component unit. As more fully provided in this Article XIII, tourism improvement districts may contract with the city for performance of any or all administrative, financial, or legal services on behalf of the district.

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Sec. 20-404. Definitions.

As used in this Article XIII, unless the context indicates otherwise, the following words shall have the meanings set forth below:

- (1) "Annual Plan" means the Board's annual report outlining the district's revenues, expenditures, projects, and goals.
- (2) "Board" means the Board of Directors of a tourism improvement district.
- (3) "Capital Improvement" has the same meaning as provided in Sec. 20-16 (5).
- (4) "Capital Maintenance" has the same meaning as provided in Sec. 20-16 (5.5).
- (5) "City" means the City and County of Denver, a home rule city and municipal corporation of the state of Colorado.
- (6) "City Council" means the City Council of the City.
- (7) "Creation Ordinance" means the ordinance passed by City Council creating the tourism improvement district and containing the information required in Sec. 20-414.
- (8) "Department" means the City's Department of Finance.
- (9) "Director" means a member of the Board of a district.
- (10) "Elector" means a natural person who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, is registered to vote in general elections in the State of Colorado, and who:
 - i. Holds a Lodger's Tax License issued by the City for a Lodging Business in the tourism improvement district; or
 - ii. Is the natural person designated to vote for an entity that:
 1. Is not a natural person, and
 2. Holds a Lodger's Tax License issued by the City for a Lodging Business in the tourism improvement district.Such designation must be in writing, under oath, on a form approved by the Board, and filed with the secretary of the district. Only one such person may be designated by an owner.
 - iii. Nothing in this subsection (j) shall permit a Lodging Business to cast more than one vote per Lodging Business whether through a designated a elector or as a natural person holding a Lodger's Tax License.
- (11) "Initial Plan" means the plan submitted with the petition to organize a tourism improvement district containing the information required in Sec. 20-409.

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- (12)“Lodger’s Tax License” means a business license issued pursuant to Division 2 of Article IV of Chapter 53 of the code.
- (13)“Lodging” has the same meaning as provided in section 53-170 (2) of the code, subject to the exemptions set forth in section 53-170 of the code.
- (14)“Lodging Business” means any business that is engaged in furnishing Lodging at a discrete location in the City, is subject to the licensing requirements of Article IV of Chapter 53 of the code, and offers fifty (50) or more Lodging rooms at that location.
- (15)“Tourism Improvements and Services” means Capital Improvements to and Capital Maintenance of the Colorado Convention Center; Capital Improvements to or Capital Maintenance of any other publicly-owned building or facility located anywhere in the City and primarily designed to host and serve conventions and meetings or to otherwise serve visitors to the City and the traveling public; marketing and promotions services designed to attract more tourists, visitors, conventions and other meetings to the City; or any combination of the foregoing improvements and services.
- (16)“Manager” means the Manager of Finance, as defined by the City’s Charter, (also known as the Chief Financial Officer) or the Manager’s designee. The Manager may delegate any supervision, management, function, task, duty, responsibility, notice, hearing, reporting, decision, or other activity of the Manager in this Article XIII to any person elected, appointed, or employed by the City or under contract with the City. In the event of such delegation, such designee shall act for the Manager.
- (17)“Self-Affirmation” means a self-affirmation substantially in the form shown in Sec. 20-408.

Sec. 20-405. General Powers of tourism improvement districts.

Except as may be limited by the Creation Ordinance, tourism improvement districts shall have the following powers:

- a) *Term.* To have perpetual existence;
- b) *Levy Taxes, fees or assessments.* To fund Tourism Improvements and Services by levying a tax, fee or assessment on the Lodging Businesses or upon persons purchasing Lodging; provided, however, that a district shall have no authority to impose any ad valorem property tax.
- c) *Multiple-fiscal year financial obligations.* To incur by contract multiple-fiscal year financial obligations secured by the revenue of the district; provided however that any such multiple fiscal year financial obligations shall be solely considered an obligation of the district and not of the city.
- d) *Elections.* To hold elections for the purpose of levying taxes, approving any multiple-fiscal year obligation of the district, or conducting any other district affairs.
- e) *Contracts.* To enter into contracts and agreements affecting the affairs of the district, including contracts with the City for the collection and expenditure of district tax revenue, or for any other administrative, legal or financial services necessary to assist the district in the performance of its lawful functions.
- f) *Litigation.* To sue and be sued and be a party to suits, actions or proceedings.

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- g) *Bylaws*. To adopt and amend bylaws not in conflict with the constitution and laws of the State of Colorado or the City for carrying on the business, objectives, and affairs of the Board and of the district.
- h) *Necessary, Incidental, and Implied Powers*. To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this Article XIII. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Article XIII.

Sec. 20-406 Prohibited Powers.

A tourism improvement district shall have neither the power of eminent domain, nor any police or regulatory powers. A tourism improvement district shall not have the power to incur bonded debt or indebtedness in any other form; but may have the power to enter into contractual multiple-fiscal year financial obligations within the meaning of Article X, Section 20(4)(b) of the Colorado Constitution, subject to the approval of the Electors of the district.

Sec. 20-407 How Initiated.

- a) *Petition*. Any proposal for the creation of a tourism improvement district may be initiated by a petition filed with the Manager, subject to the requirements set forth in this section.
- b) *Contents of Petition*. Each petition shall include:
 - i. A description of the boundaries of the district which may be either coterminous with the boundaries of the entire City, or a smaller geographical area encompassing only a portion of the City;
 - ii. A listing and description of the total number of Lodging Businesses to be included within the district, the street address of each such Lodging Business, and the name of the holder of the Lodger's Tax License for each such Lodging Business
 - iii. A general description of the Tourism Improvements and Services that the district intends to fund;
 - iv. The proposed taxes to be levied by the district, if approved by the Electors of the district, any other proposed fees or assessments to be levied by the district, the proposed method by which any taxes, fees or assessments will be collected and disbursed, and the intended uses of any revenue derived from any tax, fee or assessment;
 - v. The proposed composition of the Board, including the number of directors desired which will be in accordance with Sec. 20-415.
 - vi. The names of three persons who shall represent the petitioners on matters relating to the Petition and Initial Plan.

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- vii. The Initial Plan of the district, containing the information specified in section 20-409.
 - viii. All signatures on petitions shall be accompanied by a self-affirmation substantially in the form provided in Sec. 20-408.
- c) *Petition Sections.* A petition may consist of one or more petition sections, all of which will be aggregated to determine whether the requirements of section 20-409 (e) have been met.
- d) *Fee for Petition.* The Manager may require, by rule and regulation, payment of a fee or charge for the filing, review, approval, or amendment of any petition and Initial Plan for a district. The Manager may waive such fee upon a showing of just cause.

Sec. 20-408 Self-Affirmation, Penalties

- a) The self-affirmation on a petition shall state: "I state, under penalty of law that to my knowledge and belief the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder."
- b) A self-affirmation on a petition shall not be valid after one year has elapsed between the date of the self-affirmation as shown on the petition and the date that the petition is filed with the Manager pursuant to Sec. 20-409.
- c) A self-affirmation shall be presumed valid unless competent evidence to the contrary is presented to and accepted by the Manager, or the City Council determines otherwise.
- d) If a person who is eligible to sign a petition is unable to make a signature, such person may affirm by making a mark on the self-affirmation, with or without assistance, witnessed by another person.
- e) It shall be unlawful for any person knowingly to make a false statement on a self-affirmation on any petition filed pursuant to this Article XIII.
- f) It shall be unlawful for any person to, by use of force or any other means, unduly influence a person to sign a petition or to refrain from signing a petition, falsely make, alter, forge, or counterfeit any petition before or after it has been filed as provided in Sec. 20-409 or to destroy, deface, mutilate, or tamper with any petition before or after it has been filed as provided in Sec. 20-409.

Sec. 20-409 Petition Submittal.

In all cases in which a district is proposed pursuant to this Article XIII, the petition filed with the Manager in accordance with Sec. 20-407 (a) must be signed by Electors representing at least thirty percent (30%) of the Lodging Businesses to be included in the district, and appended to the petition shall be an

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Initial Plan for the district which shall include, in addition to the information specified in 20-407 (b), the following information:

- a) *Name*. The proposed name of the district, which must substantially follow the form “ _____ Tourism Improvement District”.
- b) *Purpose*. The primary purpose or rationale for the district.
- c) *Location*. A description and map of Lodging Businesses within the proposed district, providing sufficient specificity such that a holder of a lodger’s tax license issued by the City for a Lodging Business in the City is reasonably able to determine whether their Lodging Business is within or outside of the district’s boundaries.
- d) *Public Participation*. A summary of the process employed by petitioners to inform the Eligible Electors of the proposed district and of the efforts to organize the district in a manner that will allow the electors the opportunity to participate, and the results of such process.
- e) *Board*. The proposed names of any Directors to be nominated by the Electors.
- f) *Promotional Plan*. A summary of the promotional efforts, if any, that the district plans to undertake as part of its proposed Tourism Improvements and Services, the cost thereof, and the manner in which such promotional efforts will be administered.
- g) *Financial Plan*. A financial plan showing:
 - i. The type and rate of any tax, fee or assessment that will be levied for district purposes and how revenues derived from any tax, fee or assessment will be used over time;
 - ii. Any anticipated multiple-fiscal year financial obligations or other contractual obligations to be incurred by the district;
 - iii. The reasonably estimated Tourism Improvements and Services that will be funded by the district;
 - iv. A draft first year budget;
- h) *Term*. The proposed term for the district shall be perpetual unless otherwise stated in the Creation Ordinance, provided that such district may be dissolved as provided in section 20-420. If the term for the district is less than perpetual, then the Creation Ordinance shall include provisions for dissolution of the district at the end of the term or for the approval of the continued existence of the district by an amendment to the Creation Ordinance after the receipt of either (i) a petition of the Electors, (ii) a resolution of the Board, or (iii) an election of the Electors of the district in which such electors approve such continued existence.
- i) *Conclusion*. A request for City Council to approve the creation of the district.

Sec. 20-410 Boundaries of District.

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The boundaries of a district may be coterminous with the boundaries of the City, or may consist of a smaller geographical area encompassing only a portion of the City if so provided in the petition. The boundaries of the district shall be described in the Creation Ordinance.

Sec. 20-411 Inclusion or exclusion of Lodging Businesses After District is Created.

Unless an alternative procedure for future inclusion or exclusion of Lodging Businesses is provided in the petition for creation of a tourism improvement district, the Creation Ordinance for a tourism improvement district may provide for the automatic inclusion within the district of additional Lodging Businesses within the boundaries of the district upon the issuance of a new lodger's tax license to any such Lodging Businesses after the tourism improvement district is created, and for the automatic exclusion from the district of any properties upon which a Lodging Business ceases to exist after the tourism improvement district is created.

Sec. 20-412 Notice of Petition.

In all cases when a petition to organize a district has been filed and the costs of Tourism Improvements and Services are to be funded wholly or in part by taxes levied by the district on Lodging Businesses in the district, and if the Manager determines that the petition is in compliance with the requirements of this Article XIII, then the Manager shall forward the petition to the City Council for action. The Manager shall give notice by advertisement for three (3) publication days, exclusive of Saturdays, Sundays and holidays, in an official publication of the City, and by first class mail to the holders of lodging tax licenses for Lodging Businesses that are proposed to be included in the district. Said notice shall:

- (a) Describe the Tourism Improvements and Services that the district intends to undertake;
- (b) Include a general description of the district boundaries and Lodging Businesses within such boundaries;
- (c) Prominently state the date, place, and time for a City Council hearing on the organization of the proposed district which shall be no fewer than fourteen (14) days after the publication of the notice and mailing of notices.

Sec. 20-413 Hearing and Order on the Petition.

- a) At the time and place specified in the notice required by section 20-412 (c), the City Council shall conduct a hearing for the purposes of
 - i. Ascertaining from the petition and such other information as may be available, whether the petition has been circulated and signed in conformity with the applicable requirements of this Article XIII, and
 - ii. Considering the desirability of and the need for the Tourism Improvements and Services proposed to be funded by the district.
- b) The findings of City Council on the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive.

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Sec. 20-414 Creation Ordinance.

- a) If, pursuant to its findings at the public hearing, City Council determines that it is in the City's best interest to create the proposed tourism improvement district, Council shall adopt a Creation Ordinance.
- b) At a minimum, the Creation Ordinance shall contain the following:
 - i. Boundaries of the District;
 - ii. The powers and limits of power to be conferred on the district, as limited by this article;
 - iii. The number of Board members, appointments of the initial Board members, and the initial terms of the initial Board members;
 - iv. The contents of the initial plan of the district as required by section 20-409;
 - v. Findings by the City Council that the district is duly organized; and
 - vi. Term, if any, of the District.
- c) City Council shall consider approval of an ordinance to create the district. If approved, such ordinance shall create the district and approve the Initial Plan as presented with or without modifications. The finding of City Council by ordinance that the district is duly organized after notice duly given, or that a petition was or was not filed or was or was not duly subscribed and acknowledged as herein required, shall be conclusive in every court or other tribunal.

Sec. 20-415 Board of Directors.

- a) *Board of Directors.* As specified in the Creation Ordinance, a district shall have a Board of five (5) to (9) members. At least two (2) members of the Board shall appointed by the Mayor and confirmed by the City Council. All other members of the Board may be nominated by the Electors of the district in the manner provided in the Petition, provided that any such nominees shall be subject to appointment by the Mayor and confirmation by the Council. The members of the initial Board shall be confirmed in the Creation Ordinance with one-third, or as near to one-third as possible as determined by the Mayor, of initial appointees to have a term of one year, one-third of the appointees to have a term of two years, and one-third of the appointees to have a term of three years. All members of the Board shall be Electors within the district. The initial Board members' terms shall be deemed to have commenced on the effective date of the Creation Ordinance and extend until the dates specified by the Mayor. Upon the expiration of the initial terms, successors shall be appointed by the Mayor and confirmed by the City Council for terms of three years.
- b) *Board Serves at Pleasure of the Mayor.* All Board members serve at the pleasure of the Mayor and can be removed without cause.
- c) *Officers and Duties.* The Board shall appoint a president, secretary, treasurer, and such other officers as the Board deems necessary, and the same Board member may hold more than one position except that president and secretary shall not be held by the same person. The secretary shall keep a record of all proceedings, minutes of meetings, certificates, contracts, and corporate acts of the Board, which

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shall be open to inspection pursuant to the applicable provisions of Article 72 of Title 24, C.R.S. by the electors of the district and other interested parties. The district shall keep permanent records containing accurate accounts of all money received by or disbursed on behalf of the District and shall make such annual or other reports to the City as it may require.

- d) *Potential Conflicts of Interest.* Each member of the Board is required to disclose any potential conflicting interest in any transaction. Ownership or a leasehold interest, in and of itself, by a Board member, such member's employer, or the entity that designated the member as an elector, of property within the District shall not be considered a potential conflicting interest.
- e) *Meetings.* Upon notice to each member of the Board and the public, the Board shall hold public meetings, which shall be held in a place to be designated by the Board as often as the needs of the District require, but no less than once annually. The meetings of the Board shall be subject to the provisions of Denver Revised Municipal Code Sec. 2-30 *et seq.* The Board shall act by resolution or motion.

Sec. 20-416 Taxing Authority; other district revenues.

- a) A district shall exercise taxing authority or the authority to impose fees and assessments to the extent and in the manner provided for in the Creation Ordinance for the district.
- b) Procedures for collection and disbursement of district tax revenue and other district revenue shall be as provided in the Creation Ordinance. A district may contract with the City for collection and enforcement of district taxes in a manner similar to the collection and enforcement of City lodger's taxes, as provided in Article IV of Chapter 53 of the code.
- c) No district tax or multiple-fiscal year financial obligation in which such taxes or other revenues of the district are pledged shall be imposed or incurred unless and until the Electors of the district have approved the tax or multiple-fiscal year financial obligation in an election conducted in compliance with Article X, Section 20 of the Colorado Constitution. The Board shall call and conduct the election in accordance with the Colorado Local Government Election Code, Article 13.5 of Title 1, C.R.S. It is the intent of this section that elections for tourism improvement districts shall be conducted in a manner substantially similar to the way elections are conducted for newly formed special districts under Article I of Title 32, C.R.S.; provided, however, that the definition of Electors eligible to vote in such an election shall be as provided in this Article XIII. In the event of any other conflict between this Article XIII and the state statutes cited in this section, the requirements of this Article XIII shall control.

Sec. 20-417. Annual Plan and Operating Budget.

The board of any tourism improvement district shall, by September 30 of each year, file with the Manager a budget and Annual Plan for the ensuing year. The Annual Plan and operating budget shall be subject to approval of the City Council each year in a manner similar to the way the operating plans and budgets of business improvement districts are approved under Sec. 31-25-1211, C.R.S. The Annual Plan and operating budget may, from time to time, be amended by the district with the approval of the City Council in substantially the same manner as the process for formulating the Annual Plan and operating budget for each year.

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Sec. 20-418. Establishment of a District File.

- a) *Content of the File.* Either the Board or the Manager acting on behalf of the Board shall cause to be created and maintained a file containing the petition, Creation Ordinance, Initial Plan, Annual Plans and operating budgets, and amendments thereto, inclusions and exclusions of Lodging Businesses, and the names and addresses of all Directors. The file shall also list the name, address, telephone number, fax number, and email address of one or more persons to contact for information concerning the District.
- b) *Updates to the File.* On or before August 1 of each year the District or the Manager acting on behalf of the District will update all information within the District file as necessary.

Sec. 20-419 Correction of Faulty Notices.

In any case where it is found that a notice provided for in this Article XIII was not given, the City Council, Manager, or Board as applicable shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated. The City Council, Manager, or Board, in that case, shall order due notice be given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Sec. 20-420. Dissolution of a District.

- a) *Initiation by Manager.* Once created a district shall not be dissolved except when a provision for automatic dissolution on a date certain is provided in the Creation Ordinance or except by a request made by the Manager to the City Council for a dissolution ordinance
- b) *Contents of Request for Dissolution.* A request for dissolution shall state:
 - i. Name of the district;
 - ii. A description of the real property within the district;
 - iii. A description of the Lodging Businesses within the district;
 - iv. A description of the Tourism Improvements and Services furnished by the district at the time of dissolution;
 - v. The plan for the continued provision of Tourism Improvements and Services if the district is dissolved;
 - vi. A finding by the Manager, that dissolution is in the best interests of the City and the district.
- c) *Winding Up of District.* A district shall not be dissolved until all its contracts and legal obligations have been fulfilled.
- d) *Notice and Hearing.* Unless automatic dissolution of the district on a date certain is provided in the Creation Ordinance, no dissolution shall occur except by an ordinance adopted by the City Council following a public hearing called after notice to Lodging Businesses located within the District is given in the same manner as provided in section 20-412.

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Sec. 20-421 Limitations of Actions.

No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity or enjoin the performance of any act, or the levy or collection of any tax for a district, or for any other relief against any acts or proceedings done or had under this Article XIII, whether based upon a claim of illegalities, irregularities or jurisdictional defects, shall be maintained unless commenced within thirty (30) days after the performance of the act complained of or else such proceeding shall be thereafter perpetually barred.

Sec. 20-422 Liberal Construction

This Article XIII, being necessary to secure the public health, safety, welfare, and convenience, shall be liberally construed to affect its purposes within the parameters of the City's Charter and home rule authority.

Sec. 20-423 Substantial Compliance.

Substantial compliance with this Article XIII shall be all that is required in determining the validity of any petition or the performance of any duty hereunder.

Sec. 20-424 Prior City bonds and other City obligations.

Nothing herein shall be deemed or construed in any manner that impairs the rights of the owners or holders of any City bonds or other City obligations. In the event of any such impairment, the section, clause, phrase, or word of this Article XIII causing such impairment shall be deemed severed from this Article XIII so as to avoid the impairment.