

Introduced by

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF PASADENA ADDING
CHAPTER 4.100 TO TITLE 4 OF THE PASADENA
MUNICIPAL CODE ESTABLISHING THE PASADENA
TOURISM BUSINESS IMPROVEMENT DISTRICT

The People of the City of Pasadena do ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

“Summary

The subject ordinance, Ordinance No. _____, adds Chapter 4.100 to the Pasadena Municipal Code and creates the Pasadena Tourism Business Improvement District (“District”) under Streets and Highways Code Section 36500 et.seq. (“the Act”). This ordinance was adopted after the required public meeting and public hearing were held as required under the Act. Under the ordinance, hotels and motels operating within the City will be assessed an amount not to exceed 2.89% of room revenue to fund tourism marketing and promotion. An Annual Report was prepared and adopted by the Advisory Board to District setting out how the assessment monies will be spent. The assessments must be spent in accordance with the adopted Annual Report. The ordinance sets out the requirements for the collection of the assessment and penalties for failure to pay the assessment.

Ordinance No. _____ shall take effect 30 days after its publication.”

RECITALS:

WHEREAS, the City of Pasadena (the "City") is a charter city organized and existing under the laws of the State of California; and

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code Sections 36500 et seq.) (the "Law") provides that the City may establish a Parking and Business Improvement Area (a "PBIA") to finance public programs to attract tourist visits to areas where tourism is economically important and desired; and

WHEREAS, tourism is economically important and desired in the City; and

WHEREAS, the Law provides that the City may fund PBIA activities through the levy of an assessment against businesses that benefit from tourist visits in order to fund such tourism-related programs; and

WHEREAS, hotels and motels receive a special benefit from tourist visits that is distinct and far greater than the benefit received by other businesses within the City; and

WHEREAS, on December 2, 2002, the City Council (i) appointed an Advisory Board (the "Advisory Board") for the Pasadena Tourism Business Improvement District (the "District"), a proposed PBIA, (ii) directed the preparation of a report pursuant to Section 36533 (b) of the Law and, (iii) set the time and place for a public meeting and public hearing to receive

comments on the proposed District and a proposed assessment against businesses located in the District (the "Assessment"); and

WHEREAS, in accordance with Section 36533 of the Law, the Advisory Board prepared and filed with the City Clerk a report entitled "Report of the Advisory Board with Regard to the Pasadena Tourism Business Improvement District for Fiscal Year 2002-2003" (the "Report"). A copy of the Report is on file in the office of the City Clerk and available for public inspection; and

WHEREAS, on January 6, 2003 the City Council held a noticed public meeting regarding the establishment of the District and the levy of the Assessment. At this meeting, all persons had an opportunity to give public testimony on the Assessment; and

WHEREAS, on January 6, 2003, following the public testimony given at the public meeting, the City Council adopted its Resolution No. 8186, entitled "A Resolution Of The City Council Of The City Of Pasadena Confirming The Report Of The Advisory Board In Connection With The Establishment Of The Proposed Pasadena Tourism Business Improvement District, Declaring Its Intention To Establish Said District, Declaring Its Intention To Levy An Assessment On Businesses Within Said District For Fiscal Year 2002-2003, And Setting A Time And Place For A Public Hearing On The Establishment Of The District And The Levy Of The Assessment;"(the "Resolution of Intention"); and

WHEREAS, on January 27, 2003, at 6:30 PM, in the City Council Chambers at 100 North Garfield Ave., Pasadena, California, 91109, the City Council held a noticed public hearing at which the testimony of all interested persons regarding the establishment of the District, the extent of the District, the Assessment, the furnishing of specific types of activities

by the District or the Fiscal Year 2002-2003 levy of the Assessment was heard and considered, and a full, fair and complete hearing was held; and

WHEREAS, at the public hearing, the City Council heard and considered all protests, and all protests, both written and oral, were duly overruled; and

WHEREAS, the City Council hereby determines that there was not a majority protest within the meaning of Section 36525 of the Law; and

WHEREAS, the City Council hereby finds that the businesses which will be subject to the Assessment will benefit from the tourism-related activities to be funded by the Assessment and that such businesses benefit from tourist visits; and

WHEREAS, the City Council hereby finds that the public interest, convenience and necessity require the establishment of the proposed District.

THE PEOPLE OF THE CITY OF PASADENA ORDAIN AS FOLLOWS:

SECTION 2. The City Council of the City of Pasadena hereby finds, declares, and resolves that the above recitals are true and correct.

SECTION 3. Title 4 of the Pasadena Municipal Code (the "Code") is amended by adding a new Chapter 4.100 to read as follows:

"Chapter 4.100

Sections:

- 4.100.010 Short Title.**
- 4.100.020 Definitions.**
- 4.100.030 District Established.**
- 4.100.040 Boundaries**
- 4.100.050 Activities**
- 4.100.060 Assessment**
- 4.100.070 Assessment-Businesses Subject to Assessment**

- 4.100.080 Assessment-New Business**
- 4.100.090 Assessment-Basis and Rate**
- 4.100.100 Assessment-Collection**
- 4.100.110 Assessment-Penalty and Interest**
- 4.100.120 Assessment-Debt to City of Pasadena**
- 4.100.130 Assessment-Election to Recover From Transient**
- 4.100.140 Special Fund**
- 4.100.150 Use of Revenues**
- 4.100.160 Contracting of Funds**
- 4.100.170 Amendments**
- 4.100.180 Recordkeeping and Inspections**

- 4.100.010 Short Title**

This chapter shall be known as the Pasadena Tourism Business Improvement District.

4.100.020 Definitions.

For the purposes of this Chapter, all capitalized terms herein shall have the meanings set forth in Section 4.44.020 of this Code. Additionally, for the purposes of this Chapter, the following definitions shall apply:

- A. "Assessment" means the assessment authorized by Section 4.100.050 of this Chapter.
- B. "Authorized Activities" means the activities authorized to be provided in connection with the District, as set forth in Section 4.100.040 of this Chapter.
- C. "District" means the Pasadena Tourism Business Improvement District established by Section 4.100.020 of this Chapter.
- D. "Fiscal Year" means the period beginning July 1 of each calendar year and ending June 30 of the following calendar year, except that the Fiscal Year ending June 30, 2003 shall begin on the later of the effective date of this Chapter or March 5, 2003.

E. "Gross Occupancy Revenue" means the total Rent received from Transients by a Hotel and Motel Business.

F. "Hotel and Motel Business" means any Operator of a Hotel other than an operator of a Hotel that is owned by a nonprofit corporation and operated as an adjunct to a charitable or educational activity.

G. "Law" means the Parking and Business Improvement Area Law of 1989, being Sections 36500 and following of the California Streets and Highways Code.

H. "Transient Occupancy Tax" means the tax imposed by the City pursuant to Section 4.44.030 of this Code.

4.100.030 District Established.

A parking and business improvement area designated as the "Pasadena Tourism Business Improvement District" is hereby created and established pursuant to the Law.

4.100.040 Boundaries.

The boundaries of the District are the city limits of the City of Pasadena.

4.100.050 Activities.

The following activities are authorized to be provided in connection with the District: (i) the promotion of tourism within the District; (ii) the promotion of public events which benefit Hotel and Motel Businesses operating in the District; (iii) furnishing of music in any public place in the District; and (iv) activities which benefit Hotel and Motel Businesses located and operating in the District. The primary purpose of these activities is to promote tourism within the District.

4.100.060 Assessment.

Except where funds are otherwise available, an assessment shall be levied annually to pay for all Authorized Activities within the District. The Assessment shall be in addition to any other assessments, fees, charges or taxes imposed by the City.

4.100.070 Assessment- Businesses Subject to Assessment

The Assessment will be levied against each Hotel and Motel Business in the City. No other business shall be subject to the Assessment.

4.100.080 Assessment- New Businesses

New Hotel and Motel Businesses established in the District after the beginning of any Fiscal Year shall not be exempt from the levy of the Assessment for that Fiscal Year but shall instead be subject to the Assessment.

4.100.090 Assessment- Basis and Rate

The Assessment will be calculated as a percentage of each day's Gross Occupancy Revenue. The rate of the Assessment effective in any Fiscal Year shall be set by resolution of the City Council adopted pursuant to Section 36535 of the Law, and shall not exceed 2.89%.

4.100.100 Assessment- Collection

The Assessment calculated based on any day's Gross Occupancy Revenues shall be paid to the City no later than the date on which the Hotel and Motel Business is required, pursuant to Section 4.44.070 of this Code, to remit to the City the Transient Occupancy Tax collected by the Hotel and Motel Business on that day.

4.100.110 Assessment- Penalties and Interest

Any Hotel and Motel Business failing to timely make payment to the City of the Assessment pursuant to Section 4.100.090 of this Chapter shall be subject to the same penalties and interest thereon as set forth in Section 4.44.080 of this Code for failure to timely remit to the City Transient Occupancy Tax payments collected by the Hotel and Motel Business.

4.100.120 Assessment- Debt to City

The amount of Assessment, penalty and interest imposed by the provisions of this Chapter shall be deemed a debt to the City. An action may be commenced in any court of competent jurisdiction in the name of the City for the amount of such debt. The conviction and punishment of any person for failure to comply with the provisions of this Chapter shall not relieve such person from paying any Assessment, penalty or interest due and unpaid at the time of such conviction nor shall payment prevent prosecution of a violation of any of the provisions of this Chapter. All remedies shall be cumulative, and the use of one or more remedies by the City to enforce this Chapter shall not bar the use of any other remedy.

4.100.130 Assessment- Election to Recover From Transient.

The Assessment is levied upon each Hotel and Motel Business subject to the Assessment, and each such business shall be solely responsible for paying all Assessments when due. Without disturbance of the foregoing, a Hotel or Motel Business may elect to recover some or all of the amount of the Assessment from Transients owning rent to the Hotel or Motel Business. The amount to be recovered from any Transient may not exceed the amount of Rent owed by that Transient to the Hotel and Motel Business, multiplied by the then effective rate of the Assessment. The amount recovered shall be identified or itemized (separately or in conjunction with the amount

of Transient Occupancy Tax owned by that Transient) on a document provided to the Transient. Assessments levied on Hotel and Motel Businesses pursuant to this Chapter and recovered from Transients pursuant to this Section are not considered "Rent" for the purposes of Section 4.44.020 of this Code.

4.100.140 Special Fund.

There is created a special fund designated as "Pasadena Tourism Business Improvement District Fund" into which all revenue derived from Assessments levied pursuant to this Ordinance shall be placed, and such funds shall be used only for the purposes specified in this Ordinance. This fund shall be subject to an annual independent audit.

4.100.150 Use of Revenues.

Revenues from the levy of the Assessment may be used only for Authorized Activities, and shall not be used for activities outside of the District.

4.100.160 Contracting of Funds

The City may contract with a separate public or private agency to administer the Authorized Activities. Any agency that holds funds in trust for purposes related to the contract shall, at no expense to the City, provide an annual independent audit report by a Certified Public Accountant of these funds. The audit may be funded from Assessment proceeds as part of the general administration of the District. At all times the City shall reserve full rights of accounting of these funds.

4.100.170 Amendments.

Hotel and Motel Businesses within the District shall be subject to any amendments to the Law.

4.100.180 Recordkeeping and Inspections.

It shall be the duty of every Hotel and Motel Business to keep all records as may be necessary to determine the amount of Assessment due hereunder and shall preserve the same for a period of 4 years. The Tax Administrator shall have the right to inspect such records at all reasonable times.

The finance director shall determine the mode and method of recordkeeping required to assist the Tax Administrator to perform the duties required of him under this section. Any audit which must be performed to secure compliance with the terms of this section is to be performed in the City. If for any reason the audit cannot be performed in the City, the Hotel and Motel Business shall reimburse the City for the actual cost of all transportation, lodging, meals, travel time and other incidental costs reasonably incurred by the city in conducting the audit”

SECTION 4. The City Council finds that Section 4.100.040 of the Code, as added by Section 2 of this Ordinance, reflects the purposes specified in the Resolution of Intention. Therefore, by virtue of Section 4.100.140 of the Code, as added by Section 2 of this Ordinance, this Ordinance prohibits the use of assessment proceeds for any purpose other than the purposes specified in the Resolution of Intention.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published or posted in the manner prescribed by law.

SECTION 6. If any section, sentence, clause or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pasadena hereby declares that it would have passed and does hereby pass this Ordinance and each

section, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 7. The Clerk Shall certify the adoption of this ordinance and shall cause this ordinance to be published by number, title and summary, and the city clerk's certification.

SECTION 8. This ordinance shall take effect upon the expiration of thirty days from its publication by title and summary.

Signed and approved this ____ day of _____, 2003.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its regular meeting of _____, 2003, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Date Published:

Jane Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:


Ann Sherwood Rider
Assistant City Attorney