Chapter 3.26
LODGING BUSINESS IMPROVEMENT DISTRICT

3.26.010 Title.

This chapter shall be known as the "City of Pismo Beach Lodging Business Improvement District Law." (Ord. O-2009-008 § 4 (part), 2009)

3.26.020 Definitions.

A. "Advisory board" shall mean the Pismo Beach Conference and Visitors Bureau.

B. "City council" shall mean the city council of the City of Pismo Beach.

C. "District" or "PBLBID" shall mean the Pismo Beach Lodging Business Improvement District created by this chapter and as delineated in Section 3.26.040.

D. "Gross lodging revenue" shall mean the rent charged by the operator per occupied room per night for all transient occupancies, plus any other non-optional ancillary charges imposed on transient occupants of occupied rooms including but not limited to resort fees, housekeeping gratuities and utility surcharges. Occupancies by federal government employees on government business for thirty consecutive days or less shall not be included in gross lodging revenues. Assessments levied pursuant to the District shall not be included in gross room rental revenue for the purpose of determining the amount of the transient occupancy tax under Chapter 3.20 of the Pismo Beach Municipal Code.

E. "Lodging operation" shall mean a hotel, as defined in Section 3.20.020 of the Pismo Beach Municipal Code, which pays transient occupancy tax to the city.

F. "Law" shall mean the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq., as amended.

G. "Operator" shall mean the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any

other capacity. Where the operator performs its functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall however, be considered to be compliance by both.

H. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. 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 the operator and the occupant providing for a longer period of occupancy. (Ord. O-2009-008 § 4 (part), 2009)

3.26.030 Authorized uses.

The purpose of forming the PBLBID as a business improvement area under the Law is to provide revenue to defray the costs of services, activities and programs promoting the operators of lodging operations in the PBLBID. It is the intent of this chapter to provide a supplemental source of funding for the promotion of lodging operations in the PBLBID and it is not intended to supplant any other existing sources of revenues that may be used by the city for the promotion of tourism. The specific services, activities and programs to be provided by the PBLBID are as follows:

A. The general promotion of lodging operations within the PBLBID shall include costs of programs and physical improvements as specified in the business plan to be adopted annually;

B. The marketing of conference, group, and vacation business that benefits the local lodging industry in the district;

C. The marketing of the PBLBID to the travel industry in order to benefit the local lodging industry in the district;

D. Administration of the PBLBID, including collection and enforcement of assessments.

(Ord. O-2012-004 § 4, 2012; Ord. O-2009-008 § 4 (part), 2009)

3.26.040 Boundaries.

The boundaries of the PBLBID shall be the boundaries of the city. (Ord. O-2009-008 § 4 (part), 2009)

3.26.050 Levy of assessment and exemptions.

A. The PBLBID shall include all lodging operations located within the PBLBID boundaries. Beginning on the effective date of the ordinance adopting the PBLBID, the assessment shall be levied on all lodging operations, existing and future, within the boundaries of the business improvement district within the city. The assessment shall be collected monthly, based on the gross lodging revenues for the previous month. New lodging operations within the boundaries shall not be exempt from the levy of assessment authorized by Section 36531 of the Law.

B. Each operator shall, on or before the last day of the month following the close of each calendar month, or at the close of any shorter reporting period which may be established by the director of administrative services, make a return to the director of administrative services, on forms provided by him, of the total gross lodging revenues charged and received for occupancies in the lodging operation. The return shall be made whether or not gross lodging revenues have been charged during the month. At the time the return is filed, the full amount of the assessment shall be remitted to the director of administrative services. The director of administrative services may establish shorter reporting periods for any lodging operation if he deems it necessary in order to insure collection of the assessment and he may require further information in the return.

C. If any operator shall fail or refuse to make, within the time provided in this chapter, any report and remittance of said assessment or any portion thereof required by this chapter, the director of administrative services shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the assessments due. As soon as the director of administrative services shall procure such facts and information as he is able to obtain upon which to base the assessment imposed by this chapter and payable by any operator who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such operator the assessment, interest and penalties provided for by this chapter. In case such determination is made, the director of administrative services shall give a notice of the amount so assessed by serving notice personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address.

D. Such operator may within ten days after the serving or mailing of such notice make application in writing to the director of administrative services for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the assessment, interest and penalties, if any, determined by the director of administrative services shall become final and conclusive and immediately due and payable. If such application is made, the director of administrative services shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such assessment, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified assessment, interest and penalties should not be so fixed. After such hearing the director of administrative services shall determine the proper assessment to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such assessment, interest and penalties.

E. It shall be the duty of every operator liable for the collection and payment to the city of any assessment levied by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the city, which records the director of administrative services shall have the right to inspect at all reasonable times. To conduct such inspections, the director of administrative services may utilize the services of city employees or of outside firms or persons such as certified public accountants or auditors, each of whom shall possess full city authority to conduct said inspections. (Ord. O-2009-008 § 4 (part), 2009)

3.26.060 Annual review of assessment.

All of the assessments imposed pursuant to this chapter shall be reviewed by the city council annually in April of each year, based upon the annual report prepared by the advisory board. The advisory board shall complete its report not later than the last day of March each year. After approval of the annual report, the city council shall follow the hearing process

as outlined in Section 36534 of the Law to levy assessments for the ensuing fiscal year. At the public hearing the city council shall hear and consider all protests to the levy of assessment. If written protests are received from lodging operations in the district proposed to pay 50% or more of the annual assessment, no further proceedings to impose the levy of assessments shall take place during the ensuing fiscal year. (Ord. O-2009-008 § 4 (part), 2009)

3.26.070 Imposition of initial assessment.

The city council hereby levies and imposes and orders the collection of the initial assessment to be imposed upon lodging operations in the PBLBID described above, which shall be calculated based upon 1% of the gross lodging revenues. Such levy shall begin on the effective date of the ordinance adopting the PBLBID. (Ord. O-2009-008 § 4 (part), 2009)

3.26.080 Use of revenue.

The activities to be provided by the PBLBID will be funded by the levy of the assessments. The total revenue from the levy of assessments within the PBLBID shall not be used to provide improvements or activities outside the PBLBID, to provide benefits to persons or entities not subject to assessment, or for any purpose other than the purposes specified in the resolution of intention or Section 3.26.030. The proceeds of the assessment shall be spent to administer marketing and visitor programs to promote lodging operations within the city, and to administer the PBLBID, including collection and enforcement of assessments. All funds shall be expended consistent with the purposes of the Law. PBLBID assessment revenues remaining at the end of any fiscal year may be used in subsequent years in which PBLBID assessments are levied as long as they are used consistent with the requirements of this section. The city council shall consider recommendations made by the advisory board as to the use of assessment revenues. (Ord. O-2012-004 § 5, 2012; Ord. O-2009-008 § 4 (part), 2009)

3.26.090 Delinquency, penalty and interest.

A. Any lodging operation that fails to remit any assessment imposed by this ordinance within the time required shall pay a penalty of 10% of the assessment amount in addition to the assessment. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10% of the amount of the assessment in addition to the amount of the assessment and the 10% penalty first imposed.

B. In addition to the penalties imposed in this chapter, any operator who fails to remit any assessment imposed by this chapter shall pay interest at the rate of 0.5% per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Any and all remedies available to the city for other nonpayment of assessments shall be applicable in the event of non-payment of an assessment under this chapter. Any penalty and interest fees collected from a lodging operation due to delinquency shall be remitted to the city for any lawful purpose.

C. Any assessment required to be paid by any lodging operation under the provisions of this chapter shall be deemed a debt owed by the lodging operation to the city. Any person owing money to the city under provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. O-2009-008 § 4 (part), 2009)

3.26.100 Advisory board.

The advisory board shall review the implementation of this chapter, the implementation of programs and activities funded through this chapter, and advise the city council on the amount of the district's assessments and on the services, programs, and activities to be funded by the assessments, and shall perform such other duties as required by the Law, including preparing the annual report required by Section 36533 of the Law. The annual report shall be submitted to the city council no later than the last day of March each year. The city council shall ensure that the advisory board has timely access to all public information regarding collection, disbursement, and uses of the funds collected under the terms of this ordinance. (Ord. O-2009-008 § 4 (part), 2009)

3.26.110 Modification or disestablishment.

The city council may modify the provisions of this chapter or may disestablish the PBLBID or parts of the PBLBID after adopting a resolution of intention to such effect, and after adoption of an ordinance in compliance with the Law. (Ord. O-2012-004 § 6, 2012; Ord. O-2009-008 § 4 (part), 2009)

3.26.120 Criminal penalties.

In addition to the civil penalties and action set forth in this chapter for failing to comply with the provisions of this chapter, the following criminal sanctions may be utilized at the discretion of the city, either together with or completely separate from the civil remedies:

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

B. Any operator or other person who fails or refuses to furnish on time any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the director of administrative services, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set out in this section.

C. Any person required to make, render, sign or certify any report or claim who makes any false or fraudulent report or claim, with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as set out in this section. (Ord. O-2009-008 § 4 (part), 2009)

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