

---

**ORDINANCE NO. 756****AN ORDINANCE ESTABLISHING BUSINESS IMPROVEMENT DISTRICT NO. 3**

---

**WHEREAS**, the City of Box Elder desires to establish a Business Improvement District pursuant to the provisions of SDCL 9-55 *et seq* and establish the method of assessment of property within the District; and

**WHEREAS**, the City of Box Elder, after receiving from a city landowner a petition to establish a Business Improvement District, adopted Resolution #24-22 "To provide Notice of Intent to Create A Business Improvement District" at a regularly scheduled meeting of the Common Council on October 15, 2024; and

**WHEREAS**, a hearing was held to accept public input on Resolution 24-22 at a regularly scheduled meeting of the Common Council at 7:05 p.m. on November 19, 2024.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Box Elder as follows:

**ARTICLE I - PURPOSE AND JURISDICTION****SECTION 1 - PURPOSE.**

Ordinance No. 756 is an ordinance to establish Business Improvement District #3, pursuant to the provisions of SDCL 9-55 *et seq*, within the jurisdiction of the City of Box Elder. The Common Council of the City of Box Elder has deemed these regulations and controls to be reasonable and reasonably related to the health, safety, and general welfare of the residents of Box Elder.

**SECTION 2 - JURISDICTION.**

Business Improvement District #3 shall encompass the following properties within the municipal limits of the City of Box Elder, South Dakota:

Atlantis LLC "La Quinta Inn & Suites" parcel (a/k/a 1416 N. Elk Vale Rd., Rapid City SD 57703. Note: address is "Rapid City" but land is located within Box Elder municipal

limits):

Lots 1 & 2 of Davis Subdivision, Section 27, Township Two North (T2N). Range Eight

East (R8E). Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota

**Atlantis LLC "Residence Inn by Marriott" parcel (a/k/a 581 Watiki Way, Box Elder SD 57719):**

Lot 1R2 of Lot 1 Revised of ISIS Subdivision, Section 27, Township Two North (T2N). Range Eight East (R8E). Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota;

**Atlantis LLC "Home2 Suites by Hilton" parcel (a/k/a 621 Watiki Way, Box Elder SD 57719):**

Lot 4 Revised of ISIS Subdivision. Section 27, Township Two North (T2N), Range Eight East (R8E). Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota.

**Atlantis LLC, "Courtyard by Marriott" parcel {a/Ida 580 Watiki Way, Box Elder, SD 57719):**

Lot 2A of ISIS Subdivision, Section 27, Township Two North (T2N), Range Eight East (RBE), Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota.

**Leased by Atlantis LLC "Box Elder Events Center a/k/a The Box" parcel (a/Ida 631 Watiki Way, Box Elder SD 57719):**

Lot 2B of ISIS Subdivision, Section 27, Township Two North (T2N). Range Eight East (RBE). Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota.

**Atlantis LLC "Future Events Center East Parking Lot; Future Homewood Suites by Hilton; & Future Starbucks" parcel:**

Lot 2R of Tract D and a PT of Vacated ROW, less lot HI W-Y Addition Subdivision, Section 27, Township Two North (T2N), Range Eight East (RBE). Black Hills Meridian (B.H.M.) Box Elder, Pennington County, South Dakota.

**Atlantis LLC "WaTiki Expansion Lot":**

Lot B Revised of lot 1 Revised of Atlantis Subdivision, Section 27, Township Two

North (T2N). Range Eight East (RBE), Black Hills Meridian (B.H.M.) Box Elder,  
Pennington County, South Dakota.

### **SECTION 3 - SEVERABILITY AND SEPARABILITY.**

Should any Article, Section, Subsection, or Provision of this Ordinance be found to be or declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof, other than the portion so declared to be invalid or unconstitutional.

## **ARTICLE II - BUSINESS IMPROVEMENT DISTRICT REGULATIONS.**

### **SECTION 1 - OCCUPANCY TAX.**

An occupancy tax in the amount of \$2.00 per room per night shall be imposed upon transient guests based upon rooms rented by any of the hotels, motels, or lodging establishments included within the District boundaries. This occupancy tax shall be fair, equitable, and uniform as to class. No occupancy tax shall be imposed on any transient guest who has been offered a room by a lodging establishment on a complimentary basis and no fee or rent was charged for such room. This tax rate may be adjusted by the Common Council by resolution.

### **SECTION 2 - NEW LODGING ESTABLISHMENTS.**

All hotels, motels, or lodging establishments within the District boundaries which are built, constructed or established after the effective date of this Ordinance shall automatically become part of the District and subject to these regulations.

### **SECTION 3 - USE OF GENERATED FUNDS.**

Any money generated by the occupancy tax may be used for any one or more of the purposes allowed by SDCL 9-55-3. The Council is hereby authorized to enter into agreements to provide for the division of the proceeds of the tax monies received as a result of this Ordinance.

### **SECTION 4 - OCCUPANCY TAX ASSESSMENT.**

The occupancy tax assessed pursuant to the terms of this Ordinance shall be remitted by the 20<sup>th</sup> day of each month to the City Finance Office, with the remittance to be for the previous calendar month's tax collections. The Finance Officer, or his or her designee, shall be entitled to audit the



books, ledgers, or franchise reports of any hotel, motel, or lodging establishment subject to the terms of this Ordinance, including the right to inspect daily reports of such hotels, motels, and lodging establishments so as to ensure that the occupancy tax assessed by this Ordinance is being properly remitted to the City. The Finance Officer shall be entitled to seek injunctive relief against any hotel, motel, or lodging establishment which does not remit the proper amount of tax monies when due, which relief may be in the form of an action requiring the offending hotel, motel, or lodging establishment owner to allow entry upon their property and access to their records, computers, or books so as to verify that the hotel, motel, or lodging establishment is remitting all monies it collects pursuant to this Ordinance and the laws of the State of South Dakota. Each hotel, motel, or lodging establishment subject to this Ordinance shall keep accurate records of amounts collected from transient guests for review by the Finance Officer or his designee pursuant to this Ordinance.

#### **SECTION 5 - OCCUPANCY TAX REMITTANCES.**

All remittances of occupancy tax collected pursuant to this Ordinance shall be due and payable to the City Finance Office on or before the 20<sup>th</sup> day of the month following the month during which the occupancy tax is collected. All amounts that are not received on or before the 20<sup>th</sup> day of the month will be charged a late fee in the amount of ten percent (10%) of the total amount due. Failure to pay such tax shall also constitute a violation of this Ordinance. Any unpaid balance under this Ordinance shall constitute a lien upon the property owned by the business or user of space being taxed, and shall become a lien against and shall run with the property and may be enforced and collected in the same manner as other unpaid real property taxes and assessments. The Finance officer shall certify all unpaid amounts or balances to the County Treasurer for collection in the same manner as general property taxes are collected. Further, the City shall have the ability to deny the issuance of any permits or licenses or any renewals thereof to any business or premise that fails to conform to the provisions of this Ordinance, including but not limited to, building permits, malt beverage licenses, and liquor licenses.

#### **SECTION 6 - RIGHTS OF THE CITY.**

Nothing within this Ordinance shall be construed as limiting any other rights which the City has or may pursue in seeking collection of monies received but not paid or not properly collected under the terms of this Ordinance. In the event that this tax becomes subject to supervision by the State of South Dakota through the State's Department of Revenue, any rights which the City has herein shall be deemed cumulative to any powers which inure to the benefit of the State.

#### **SECTION 7 - COSTS TO BE ASSESSIBLE.**

In the event of any civil or criminal action being filed seeking collection of any delinquent

assessments, the offending hotel, motel, or lodging establishment shall be responsible for and pay all attorney fees and costs incurred by the City in seeking payment under the terms of this Ordinance.

**SECTION 8 - COSTS TO BE PAID BY TAX.**

All costs incurred by the City and/or the Finance Officer pursuant to this Ordinance shall be paid from occupancy taxes collected under this Ordinance.

**SECTION 9 - COMPLIMENTARY ROOM.**

Each hotel, motel, or lodging establishment shall account for complimentary rooms which are also subject to audit by the Finance Officer, or his/her designee, with such records to show the basis for offering such room on a complimentary basis.

**SECTION 10 - SWORN STATEMENT TO BE SUBMITTED.**

Any business governed by this Ordinance shall sign a sworn statement to be submitted along with the remittance for any occupancy tax, stating as follows:

I declare under penalty of perjury, that the above accounting of rooms rented is accurate and the tax payment made herein is accurate to the best of my knowledge according to my business records.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

**ARTICLE III - BUSINESS IMPROVEMENT BOARD**

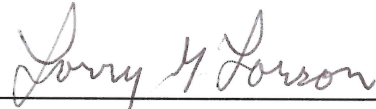
The mayor shall, with the approval of the Council, appoint a business improvement board consisting of five members. The members shall be property owners, residents, business operators, or users of space within the District. Terms of the members shall be up to three years and may be staggered to ensure continuity of the board. The board shall make recommendations to the Council for the establishment of a plan or plans for improvements in or promotion of the District. The board may make recommendations to the Council as to the use of any revenue collected pursuant to this Ordinance.

**ARTICLE IV - VIOLATIONS AND PENALTIES**

A violation of any provision of this Ordinance or any amendment thereto, or failure to perform any act required hereunder is a Class II Misdemeanor. In addition to any penalty assessed herein or any fin or penalty assessed by the court, any violator found guilty shall pay all court costs and expenses involved in the case.

**PASSED AND APPROVED ON FIRST READING** this 19th day of November, 2024.

**PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING** this 3<sup>rd</sup> day of December, 2024.



Larry Larson, Mayor

**ATTEST:**



Chaz Kokesh, City Clerk

(SEAL)



**ATTESTATION**

I, Chaz Kokesh, the City Clerk of the City of Box Elder, South Dakota, do hereby attest and state the above ordinance was published on 12/17/2024 in the manner required by law and that all procedures required by the State of South Dakota law were complied with. This ordinance shall become effective on the twentieth day after its publication, that date being:

January 6, 2024.



Chaz Kokesh, City Clerk