

**ORDINANCE NO. C2020-\_\_\_\_\_**

**AN ORDINANCE AMENDING THE BUSINESS IMPROVEMENT DISTRICT ACT TO PROVIDE FOR PERFORMANCE-BASED FUNDING OF THE BID THROUGH CITY MATCHING FUNDS, TO ESTABLISH TIMETABLES FOR COMPLIANCE WITH STATUTORY MANDATES, AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City of Gallup created a Business Improvement District (BID) in 2009, extended it in 2013 and 2018 pursuant to NMSA 1978 Section 3-63-15; and

WHEREAS, the Business Improvement District serves the purpose of promoting and restoring the economic viability of the downtown area that is within the Business Improvement District Overlay; and

WHEREAS, the Business Improvement District serves the purpose of providing the City and businesses a proactive vehicle to collaborate in revitalization efforts within the district; and

WHEREAS, revitalization of the area within the district promotes the general welfare of the entire City;

WHEREAS, the City Council has reviewed the annual report of its activities and budget that was submitted to the Council at its November 12, 2019 meeting; and

WHEREAS, the Council has reviewed the petition submitted by a number of property and business owners within the BID District, the public comments made at the November 12 and December 10, 2019 council meetings; and the presentation by the City Manager at the December 10 meeting; and

WHEREAS; the City Council voted at the December 10, 2019 to continue management and oversight of the BID under the existing BID Board and to amend the existing BID ordinance to mandate compliance with the specific requirements set forth the New Mexico statute enabling the creation of BID Districts;

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO, that Section 10-2-B-d-ii of the Gallup City Code be amended as follows:**

**10-2-B-d-ii Business Improvement District (BID) Overlay**

The purpose of the Business Improvement District (BID) Overlay is to define the area subject to Business Improvement District Ordinance (Gallup City Code Title 3, Chapter 2F).

**10-2-B-d-ii-A District Specific Standards**

1. The Business Improvement District is an assessment district and does not have district specific design standards or use regulations.

2. The BID area shall consist of boundaries being Historic Route 66 Avenue on the north, Hill Avenue on the south, the West Y on the west, and Cliff Street on the east. Incorporated herein as Figure 10-2-16 is a map defining the exact boundaries of the BID overlay.

**BE IT FURTHER ORDAINED THAT THE REMAINDER OF THE BUSINESS IMPROVEMENT DISTRICT ORDINANCE BE AMENDED AS FOLLOWS AND RECODIFIED as Gallup City Code Title 3, Chapter 2, Article F:**

3-2F-1: **SHORT TITLE:** This Article may be referred to as the *BUSINESS IMPROVEMENT DISTRICT ORDINANCE*.

3-2F-2: **PURPOSE:** The purpose of the Business Improvement District Ordinance is to:

- A. promote and restore the economic vitality of the area within the Business Improvement District (BID) by creating a district to provide for the administration and financing of additional and extended services to businesses within the district;
- B. finance local improvements within the BID; and
- C. provide the City and entrepreneurs a more flexible and proactive vehicle to collaborate in revitalization efforts in the District.

3-2F-3: **DEFINITIONS:** As used in the Business Improvement District Act:

- A. “business” means a fixed place of business where one or more persons are employed or engaged in the purchase, sale, provision or manufacturing of commodities, products or services, and includes the ownership of unoccupied real property that is held for commercial investment purposes, for sale or for lease;
- B. “council” means the Gallup City Council;
- C. “improvement” means any one or any combination of services or projects in one or more locations authorized pursuant to the Business Improvement District Ordinance;
- E. “management committee” means the district management committee as established pursuant to the Business Improvement District Ordinance;
- F. “member” means any real property or business owner that is located within the district’s geographic boundaries and includes “friends of the BID; and
- G. “real property” means real property that is used to engage in the purchase, sale, provision or manufacturing of commodities, products or services and unoccupied real property that is held for commercial investment purposes, for sale or for lease.

3-2F-4: **MANAGEMENT COMMITTEE; CREATION; DUTIES:**

- A. The BID shall be administered by a seven (7) person management committee appointed by the City Council from nominees submitted by the members of the BID. Two (2) representatives from the City appointed by the Mayor with the approval of the Council

shall serve as ex-officio, non-voting members. The voting members of the management committee shall serve initial terms of three (3) years beginning on January 1, 2019 with five (5) of those members continuing to serve two (2) additional years. Thereafter, terms shall be for a period of four years. A new member appointed to fill the vacancy of a member with an unexpired term will serve the remainder of the unexpired term. City members shall serve at the pleasure of the Mayor.

- B. The management committee shall be a nonprofit corporation that is incorporated pursuant to the New Mexico Nonprofit Corporation Act. A nonprofit corporation created pursuant to Subsection A of this section shall comply with the applicable requirements of that act.
- C. The management committee shall be responsible for the operation of the BID and shall administer all improvements within the district. Unless the management committee is replaced by an existing non-profit organization pursuant to Subsection E of this section, the by-laws and any amendments thereto are subject to the approval of the council.
- D. The management committee shall hold a meeting at least annually, on or before March 1, of the members of the BID for the purpose of obtaining input from the members concerning the projects and improvements to be submitted to the council for its approval. Notice of such meeting shall be mailed to each member at least thirty (30) days prior to the meeting. The Executive Director of the BID shall individually contact and communicate with each owner of real property within the district to obtain input regarding the projects and improvements to be submitted to the council for approval. The Executive Director shall also send a monthly communiqué or newsletter to all members of the BID.
- E. Should the council exercise its authority to terminate the management committee pursuant to Section 6 of this ordinance, the council shall appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district, to assume the position of management committee to administer and implement the business improvement district plan.

**3-2F-5: DISTRICT BENEFIT FEE ASSESSMENT:**

- A. The BID shall assess a business improvement benefit fee on any real property or business located within the district. The district benefit fee assessment schedule shall not include:
  - (1) governmentally owned real property;
  - (2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;
  - (3) real property owned by a nonprofit corporation; or
  - (4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with NMSA §3-63-10.
- B. Each tract of real property within the BID overlay shall be subject to annual property

assessments in the amount of one (1) percent of the assessed value for said property under the 2006 real property tax assessment of said property as shown by the assessment of said property done by the McKinley County assessor's office. Said assessments shall be mailed to each property owner within the BID overlay semiannually the last week of each February and August with one-half (1/2) of the total annual assessment being due and payable to the City of Gallup on or before March 10 and September 10 of each year respectively. Should any property owner fail to remit the assessment when due, the unpaid amount shall constitute a lien on the subject property which may be foreclosed upon by the City as provided by NMSA 1978 Chapter 3, Article 36. The office of the City Clerk shall prepare and mail out the BID assessments. The office of the City Clerk shall collect all payments received for BID assessments from the subject property owners and remit said funds to the City finance department.

- C. The aforementioned assessment shall be based on the 2006 valuations through the end of Fiscal Year 2021. The real property tax year that the BID assessments are based on shall be re-determined by the council on or before April 30, 2021 and biennially thereafter on or before April 30 of each subsequent two (2) year period.
- D. The City shall segregate the BID assessment payments and its matching funds in a separate account to be used solely for BID purposes. Disbursements of assessments collected by the City and any matching funds provided by the City shall be made to the BID during the months of January and July.
- E. The assessments made on commercial property within the BID overlay may be passed on by the subject property owners to their individual commercial tenants in an amount not to exceed seventy-five (75) percent of the total annual fee. If a subject property owner elects to pass on said portion of the BID annual assessment fee he shall notify in writing the City Clerk on or before February 20 of each year that the tenant shall be paying a portion of fee and the City Clerk shall send duplicate assessments to both the designated tenant and owner. Should the tenant fail to remit the assessment fee in a timely manner, the City Clerk shall notify the subject property owner in writing of said failure to remit and the subject property owner shall remit the full amount of the assessment fee to the City Clerk within thirty (30) days of the mailing of the notice or the subject property shall have a lien placed upon it for collection.
- F. The BID is authorized to apply for and receive monetary grants from any source to supplement its funds generated by assessments and City matching funds.

**3-2F-6: BID DISTRICT PLAN; ANNUAL PERFORMANCE REVIEW; CITY MATCHNG FUNDS; REPLACEMENT OF MANAGEMENT COMMITTEE**

- A. On or before March 30, 2020, and within sixty (60) of the adoption of an ordinance re-authorizing the BID pursuant to Section 10, the management committee of the BID shall submit to the council for its approval a five-year plan for BID operation which shall

include a list of proposed projects to be undertaken by the BID, the improvements to be made by each BID project, the estimated amount of benefit that each tract of real property within the BID shall have conferred upon it by the BID project, a legal description of each property to be assessed within the BID overlay along with the physical address of each property and the mailing address of the property owner as shown on the records of the McKinley County assessor's office, and the amount of the initial assessment on each subject property within the BID district. No BID project or program may duplicate services, projects, or services of the City. The council may approve the five-year plan as submitted, or may amend the plan. The five-year plan, as approved by the council, shall be incorporated into a special ordinance which shall include: a list of improvements to be provided by the district, the amount of benefit estimated to be conferred on each tract or parcel of real property, a description of the real property or businesses to be assessed a business improvement benefit fee, and the amount of the assessment to be imposed on each real property owner.

- B. Annually, on or before March 30, the management committee shall submit to the council for its approval, a budget proposal for the next fiscal year. The budget proposal shall include any recommended changes to the five-year plan, include a list of proposed projects to be undertaken by the BID, the improvements to be made by each BID project, and the estimated amount of benefit that each tract of real property within the BID shall have conferred upon it by the BID. It shall also include recommendations for projects and improvements made to the BID management committee or the Executive Director by the members of the BID. The council may approve the budget as submitted, or may amend the budget.
- C. Subject to the provisions of Subsection E of this Section, the council may match the revenue raised by the BID assessments up to a dollar for dollar match. The City shall not charge against its matching funds more than ten percent (10%) of its annual match as in-kind services for administering the BID funds and providing other support to the BID. The City shall disburse the revenues collected as BID assessments plus the City's match (less the administrative fee) to the BID management committee during the month of January for the first half-year assessments and July for the second half-year assessments.
- D. Annually, on or before August 15, the management committee shall submit to the council for its review, a progress report detailing the projects administered by the BID during the previous fiscal year. The progress report shall include a complete set of financial statements setting forth the BID's assets, liabilities, income, operating expenses, and detailing the benefits conferred by the BID projects to the individual property and business owners located within the BID district.
- E. On or before September 30, the council shall review the progress report and determine by council action the amount the City will match the revenue received from benefit fees assessed to property and business owners. The council may terminate the existing BID

management committee and appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district to assume the position of management committee to administer and implement the business improvement district plan.

**3-2F-7: ISSUANCE AND SALE OF BONDS:**

- A. Upon recommendation of the management committee, the council may issue business improvement district revenue bonds from time to time in its discretion to finance the undertaking of any improvement within the district or the exercise of any power, authorized or delegated to the City under the Business Improvement District Act, including but not limited to the issuance of bonds to pay the costs of installation, acquisition, construction or reconstruction of any public facility within the district's area of operation. The council may also issue refunding bonds for the payment or retirement of bonds previously issued by it pursuant to this section. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the City of Gallup derived from or held in connection with its undertakings and carrying out of authorized improvements within the district or activities under the Business Improvement District Act. Payment of these bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source in aid of any improvements within a district under the Business Improvement District Act and by a mortgage or pledge of any of the real property acquired within the district or otherwise pursuant to the authority granted to the City by the Business Improvement District Act.
- B. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose and the bonds and interest and income from them shall be exempted from all taxes.
- C. Bonds issued pursuant to this section shall be authorized by ordinance of the council if the authorization and planned issuance of the bonds was included in an improvement approved by the council and may be issued in one or more series and shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in the form provided by the Supplemental Public Securities Act as to registration, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption, with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto.

- D. The bonds or any portion of the bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the district's area of operation and in any other medium of publication as the council may determine. The bonds may be exchanged for other bonds on the basis of par. The bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state, the balance may be sold at private sale at not less than par at an interest cost to the City of Gallup of not to exceed the interest cost to the City of the portion of the bonds sold to the federal government.
- E. In case any of the public officials of the City of Gallup whose signatures appear on any bonds or coupons issued under the Business Improvement District Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any bonds issued pursuant to this section shall be fully negotiable.
- F. In any suit, action or proceeding involving the validity or enforceability of any bond issued pursuant to this section or the security therefor, any bond reciting in substance that it has been issued by the City of Gallup in connection with authorized improvements within the district shall be conclusively deemed to have been issued for that purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Business Improvement District Act.

**3-2F-8: FRIENDS OF THE BID:** Commercial property owners adjacent to the BID overlay boundaries shall be allowed to be included in BID projects as a "friend of the BID" if they submit a written request to the BID management committee and pay the full amount of property assessment required of property owners within the BID overlay boundaries. Any property owner who becomes a "friend of the BID" must remain subject to the BID property assessment for a minimum of five (5) years. All provisions of this section which apply to BID overlay property owners shall be binding on a "friend of the BID."

**3-2F-9: INTERPRETATION OF AUTHORITY:** It is the intention of the council to authorize the broadest discretion in the BID management committee to accomplish its goals, limited only by the express terms of the Business Improvement District Act and this Ordinance.

**2-2F-10: BID TERM; DISTRICT REVIEW; EXPIRATION OF THE BID ORDINANCE:** The business improvement district that was created by Ordinance C2018-15 shall remain in existence until December 31, 2023. Prior to that date, and prior to the issuance of business improvement district revenue bonds, the council shall review the BID and determine if it shall remain in existence. The BID Ordinance will expire automatically on that date unless affirmatively extended by a majority vote of the council. If a majority of the council decides

that the purpose for which the district was created has been served and that it is in the best interest for the district, the council shall terminate the district's status by ordinance or resolution and record this with the municipal clerk. If upon termination of a district's status there is an outstanding revenue bond obligation, the municipality shall continue to assess the business improvement benefit fee for the life of the outstanding bond.

3-2F-11: **SEVERABILITY:** If any portion of this article is found to be invalid or unconstitutional by any court of competent jurisdiction, such finding shall not affect the validity of the remaining portions of the article.

**Effective Date:** This Ordinance shall become effective thirty (30) days after its publication as provided by law.

PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of February, 2020.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita II, City Clerk

Motion made by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Vote:  
Mayor McKinney \_\_\_\_\_  
Councilor Garcia \_\_\_\_\_  
Councilor Landavazo \_\_\_\_\_  
Councilor Kumar \_\_\_\_\_  
Councilor Palochack \_\_\_\_\_