

ORDINANCE NO. 2782

AN ORDINANCE OF THE CITY OF GARDEN GROVE ESTABLISHING THE GARDEN GROVE TOURISM IMPROVEMENT DISTRICT (GGTID) PURSUANT TO THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1989

City Attorney Summary

This Ordinance establishes a business improvement/tourism promotion district (TID) encompassing visitor accommodation facilities (VAFs) along Harbor Boulevard from the Anaheim-Garden Grove border south to Garden Grove Boulevard. The Ordinance provides for assessments not to exceed (i) 2.5 percent of the gross rent per room per night for Tier I VAFs (those located north of Lampson Avenue) and (ii) 0.5 percent of the gross rent per room per night for Tier II VAFs (those located south of Lampson Avenue). The assessments will be used to promote tourism in the TID, construct and maintain improvements within the TID, and otherwise facilitate services, activities, and programs designed to increase tourism within the TID.

The Ordinance sets forth the processes for annual review, collection, and handling of the assessments. The Ordinance provides authority to contract with the Anaheim/Orange County Visitors and Convention Bureau, the Garden Grove Tourism Promotion Corporation and other entities to accomplish the TID goals. The Ordinance also provides for an Advisory Board to make recommendations to the City Council regarding TID assessments and expenditures.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, DOES FIND AND ORDAIN AS FOLLOWS:

Section 1: Purpose. The purpose of this Ordinance is to establish the Garden Grove Tourism Improvement District (GGTID), which shall be administered by the Garden Grove Tourism Promotion Corporation (GGTPC), a California non-profit mutual benefit corporation, or a successor entity acceptable to the City. The purpose of forming the GGTID as a business improvement area under the Law is to provide revenue to defray the costs of advertising and marketing efforts designed to increase overnight stays in the GGTID, construction and maintenance of improvements in the GGTID, and other services, activities, and programs that promote and encourage tourism within the GGTID, which will benefit the Operators of Visitor Accommodation Facilities paying assessments through the promotion of scenic, recreational, cultural, and other attractions.

Section 2: Definitions.

"Advisory Board" shall mean the Advisory Board appointed by the City Council pursuant to this Ordinance.

"City Council" shall mean the City Council of the City of Garden Grove.

“GGTID” shall mean the Garden Grove Tourism Improvement District created by this Ordinance and as delineated in Section 5 of this Ordinance.

“Law” shall mean the Parking and Business Improvement Area Law of 1989, codified in California Streets and Highways Code Section 36500 et seq., as it may be amended from time to time.

“Occupancy” shall mean the use or possession or the right to the use or possession, of any room or portion thereof in any Visitor Accommodation Facility for dwelling, lodging, or sleeping purposes.

“Operator” shall mean the person who is the proprietor of the Visitor Accommodation Facility, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, manager, or any other capacity. Where the Operator performs 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 Ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall be considered to be compliance by both.

“Person” shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Rent” shall mean the consideration charged, whether or not received, for the Occupancy of space in a Visitor Accommodation Facility, valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction therefrom whatsoever.

“Transient” or “Visitor” shall mean any person who exercises Occupancy or is entitled to Occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a Visitor Accommodation Facility shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement, in writing, between the Operator and the occupant providing for a longer period of Occupancy.

“Visitor Accommodation Facility” shall mean any hotel, inn, motel, vacation time share facility, or similar lodging facility or business, which caters to casual business or tourist Visitors, in whole or in part.

Section 3: Findings. The City Council of the City of Garden Grove hereby finds:

A. Pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Section 36500 et seq., (Law), on August 24,

2010, the City Council adopted Resolution No. 9009-10, entitled "A Resolution of the City of Garden Grove Declaring its Intention to Establish the Garden Grove Tourism Improvement District (GGTID) and Fixing the Time and Place of Public Meeting and Public Hearing Thereon and Giving Notice Thereof."

B. The City caused notice of a Public Meeting and Public Hearing concerning the proposed establishment of the Garden Grove Tourism Improvement District and the proposed levy of an assessment against Visitor Accommodation Facilities within the proposed GGTID for Fiscal Year 2010-2011 to be duly published and mailed as provided by law.

C. A Public Meeting and a Public Hearing concerning the proposed establishment of the GGTID and the proposed levy of assessments on Visitor Accommodation Facilities within the GGTID for fiscal year 2010-2011 were held on September 28, 2010, and October 12, 2010, respectively, in the Council Chamber at the Garden Grove Community Meeting Center, 11300 Stanford Avenue, Garden Grove, California.

D. At the Public Meeting and Public Hearing, the testimony of all interested persons for and against the proposed establishment of the GGTID, the extent of the proposed GGTID, or the furnishing of specified types of improvements and activities within the proposed GGTID, and regarding the levy of an assessment against the Visitor Accommodation Facilities within the proposed GGTID for Fiscal Year 2010-2011 was heard and considered, and a full, fair, and complete hearing was held.

E. The City Council heard and considered all protests, both written and oral. The City Council hereby determines there was not a majority protest within the meaning of Section 36525 of the Law.

F. The City Council finds that the public interest, convenience, and necessity require the establishment of the proposed Garden Grove Tourism Improvement District.

G. The City Council finds that the Visitor Accommodation Facilities within the GGTID will be specially and proportionately benefitted by the improvements and activities funded by the assessments to be levied hereby.

Section 4. Establishment of the Garden Grove Tourism Improvement District (GGTID). Pursuant to the Law, the Garden Grove Tourism Improvement District is hereby created and established. All Visitor Accommodation Facilities within the boundaries of the GGTID established by this Ordinance shall be subject to this Ordinance and any amendments of the Law.

Section 5. Boundaries. The boundaries of the GGTID shall generally include certain real property within that area of Garden Grove fronting, bordering, or near Harbor Boulevard from the City of Anaheim to Garden Grove Boulevard. The GGTID

is divided into two (2) separate zones: (i) Tier I, which includes that real property within the GGTID north of Lampson Avenue, and (ii) Tier II, which includes that real property within the GGTID south of Lampson Avenue. A map showing the precise area and boundaries of the GGTID and the two benefit zones is attached hereto at Exhibit "A" and incorporated herein by reference.

Section 6. Levy and Collection of Assessments. Except where funds are otherwise available, the assessments shall be levied annually on all Visitor Accommodation Facilities, existing and future, located within the boundaries of the GGTID to fund the improvements and activities within and that benefit the GGTID, commencing with Fiscal Year 2010-2011. The assessment shall be in addition to any other assessments, fees, charges, or taxes imposed by the City.

Each annual assessment shall be set annually by Resolution of the City Council adopted pursuant Section 36535 of the Law, and shall not exceed (i) two and one-half percent (2.5%) of the gross rent charged by the Operator per room Occupancy per night for all Transient Occupancies for each Visitor Accommodation Facility in Tier I, and (ii) one-half percent (0.5%) of the gross rent charged by the Operator per room Occupancy per night for all Transient Occupancies for each Visitor Accommodation Facility in Tier II. The City Council hereby finds and determines that the respective assessment amounts to be levied in the two benefit zones are reasonably proportional to the estimated benefits expected to accrue to the Visitor Accommodation Facilities within each benefit zone.

The assessment shall be collected monthly, based on the applicable percentage of the amount of gross rent charged by the Operator per room Occupancy per night for all Transient Occupancies in the prior calendar month, in the same manner and at the same frequency as the City's Hotel Visitors Tax imposed pursuant to Chapter 12 of Title 3 of the Garden Grove Municipal Code. Each Operator shall ensure that the assessments levied and remitted to the City pursuant to this Ordinance are clearly identified as distinct from the Hotel Visitors Tax revenues collected and remitted by the Operator. Upon request by the City, Visitor Accommodation Facilities shall furnish copies of records to the City or its designee that will allow confirmation that appropriate assessments have been paid.

Section 7. Annual Review of Assessment. All of the assessments imposed pursuant to this Ordinance shall be reviewed by the City Council annually, based upon the Annual Report prepared by the Advisory Board appointed pursuant to this Ordinance and Sections 36530 and 36533 of the Law. After approval of the Annual Report, the City Council shall follow the hearing process as outlined in Section 36534 of the Law. At the Public Hearing the City Council shall hear and consider all protests. If written protests are received from Visitor Accommodation Facilities in the GGTID paying fifty percent (50%) or more of the annual assessment, no further proceedings to continue the levy of assessments shall take place. The protests shall be weighted based upon the annual assessment for the prior year on each Visitor Accommodation Facility subject to the assessment. For example, a Visitor

Accommodation Facility that is assessed 8.76 percent of the prior year's total annual assessment shall have an 8.76 percent weighted vote regarding the annual assessment for the immediately succeeding year.

Section 8. Imposition of Assessment. The assessment imposed by this Ordinance is levied upon the Visitor Accommodation Facilities within the GGTID, and the Operator of each Visitor Accommodation Facility shall be solely responsible for paying all assessments when due. Notwithstanding the foregoing, in the event that the Operator of a Visitor Accommodation Facility elects to pass on some or all of the assessment to customers of the Visitor Accommodation Facility, the Operator shall separately identify or itemize the assessment on any document provided to a customer. Assessments levied on the Operators of Visitor Accommodation Facilities pursuant to this Ordinance and passed onto customers are not part of a Visitor Accommodation Facility's gross rent for purposes of this Ordinance or the calculation of the City's Hotel Visitors Tax pursuant to Chapter 12 of Title 3 of the Garden Grove Municipal Code.

Section 9. Use of Proceeds From Assessments. Revenues from the assessments collected from Visitor Accommodation Facilities within the GGTID shall be used to provide improvements or activities in the GGTID and for the purposes of expenses, services, activities, and programs specified in this Ordinance, in the Resolution of Intention to form the GGTID, or as modified by the City Council pursuant to compliance with the Law. The revenues from such assessments may also be used to pay or reimburse administrative costs incurred by the City or any entity contracting with the City pursuant to Section 11, below, in connection with the formation of the GGTID, the levy and collection of assessments, and the ongoing administration of the improvements and activities funded by the assessments. Notwithstanding the foregoing, payment or reimbursement to the City for administrative costs incurred by the City shall not exceed three percent (3%) of assessment revenues collected. Revenues from the assessments collected in the GGTID shall not be used for any purposes other than those set forth in this Section 9.

Section 10. Penalty for Non-Payment of Assessment. Any Visitor Accommodation Facility that fails to remit any assessments imposed by this Ordinance within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment due. Any Visitor Accommodation Facility that fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment and the ten percent (10%) penalty first imposed. Fifty percent (50%) of all such penalties collected shall be retained by the City to offset costs incurred by the City in collecting said penalties. The remaining fifty percent (50%) of all such penalties collected shall be used for the same purposes as the proceeds from the assessments. In addition to the penalties imposed, any Visitor Accommodation Facility that fails to remit any assessment imposed by this

Ordinance shall pay interest at the rate of one and one-half percent (1.5%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which remittance first became delinquent. All such interest collected shall be used for the same purposes as the proceeds from the assessments.

Section 11. Power to Contract. The City Council may contract from time to time with a separate entity or entities, including, but not limited to, the GGTPC and/or the Anaheim/Orange County Visitors & Convention Bureau, to provide and/or administer improvements and activities funded by the assessments. Except with respect to contracts required by Law to be entered into by the City, if the City Council enters into a contract with GGTPC or another entity to administer GGID, that entity shall be authorized to contract in furtherance of the purposes of the GGID.

Section 12. Advisory Board. The City Council shall appoint an Advisory Board pursuant to Section 36530 of the Law in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on the classification of businesses, as applicable, and on the method and basis of levying the assessments. Unless otherwise expressly provided by the City Council, the Board of Directors of the GGTPC shall constitute the Advisory Board.

Section 13. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 14. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 26th day of October 2010.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on October 12, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, DO, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

and was passed on October 26, 2010, by the following vote:

AYES: COUNCIL MEMBERS: (5) BROADWATER, DO, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

EXHIBIT "A"

BOUNDARIES AND MAP OF THE GARDEN GROVE TOURISM IMPROVEMENT
DISTRICT AND ASSESSMENT ZONES THEREIN

Any and all current and future Visitor Accommodation Facilities falling within the following boundaries will automatically be included in the GTID.

