

ORDINANCE No. 278

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WEST YELLOWSTONE AMENDING SECTION 3.14 OF THE WEST YELLOWSTONE TOWN CODE TO ALLOW THE TOWN TO CHANGE THE RATE OF ASSESSMENT BY RESOLUTION AND OTHER MINOR UPDATES

WHEREAS, the Town Council of the Town of West Yellowstone believes that the Tourism Business Improvement District (TBID) provides a invaluable and necessary service to the businesses and citizens of West Yellowstone; and

WHEREAS, from 2009 to the present, the assessment to properties within the TBID was \$1.00 per room night; and

WHEREAS, in July of 2024, the TBID Board recommended to the Town Council that the assessment to the properties contained within the district be increased to \$2.00 per room night in order to keep up with the increased costs of marketing and their other expenses; and

WHEREAS, on September 3, 2024, the Town Council approved Resolution No. 807, a resolution increasing the assessment for the Tourism Business Improvement District to \$2.00 per room night in accordance with Section 7-12-1132(4), MCA; and

WHEREAS, Section 3.14 of the Town Code should be amended as set out on **Exhibit A** to provide for increasing the assessments by resolution, taking out references to \$1.00 per room night, changing the identification of the Operations Manager to Town Manager, and other minor updates; and

WHEREAS, on September 17, 2024, the Town Council held a duly noticed public meeting on the first reading of the Ordinance amending Section 3.14 of the West Yellowstone Municipal Code at which it received public testimony either in favor of or against the proposed amendments.

WHEREAS, on October 1, 2024, the Town Council of the Town of West Yellowstone held a duly noticed public hearing on the second reading of this Ordinance at which it received public testimony in favor of or against the amendments to Section 3.14 of the West Yellowstone Municipal Code; and

NOW THEREFORE, BE IT ORDAINED, based on the public testimony, the recommendations from the TBID Board and its review of the attached amended Section 3.14, by the Town Council of the Town of West Yellowstone adopts this Ordinance approving the amendments attached hereto as Exhibit A, and such shall be made to the municipal code of the

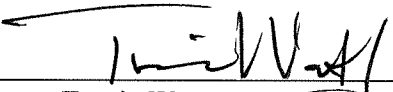
Town of West Yellowstone, effectively amending Section 3.14.

Section 1: REPEALER: All ordinances and parts of ordinances in conflict with provisions of this ordinance, except as provided above, are hereby amended or repealed.

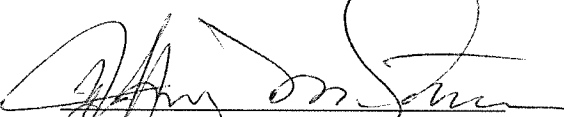
Section 2: EFFECTIVE DATE: This ordinance shall be in full force and effect thirty (30) days after final adoption by the Town Council of the Town of West Yellowstone.

Section 3: SEVERABILITY: If any portion of this ordinance or the application therefore to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which may be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are declared to be severable.


PASSED BY the Town Council and approved by the Mayor of the Town of West Yellowstone, Montana, this 1 day of October, 2024.



Mayor Travis Watt



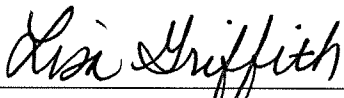
Council Member Jeff Mathews



Council Member Brian Benike

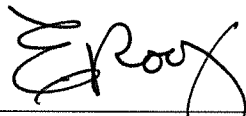


Council Member Jeff McBirnie



Council Member Lisa Griffith

ATTEST:



Town Clerk Elizabeth Roos

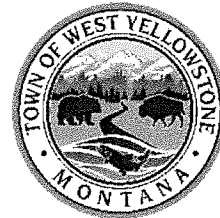


EXHIBIT A

Chapter 3.14

TOURISM BUSINESS IMPROVEMENT DISTRICT

Sections:

- 3.14.010 Findings and purpose.
- 3.14.020 Definitions.
- 3.14.030 Imposed.
- 3.14.040 Tourism business improvement district assessment.
- 3.14.050 Boundaries.
- 3.14.060 Rate--Duration.
- 3.14.070 Tourism business improvement district assessment payment.
- 3.14.080 Collection duties and responsibilities.
- 3.14.090 Records and forms.
- 3.14.100 Preservation of records.
- 3.14.110 Random audit.
- 3.14.120 Appeals.
- 3.14.130 Administration and use of tourism business improvement district assessment moneys.
- 3.14.140 Tourism business improvement district assessment administration.
- 3.14.150 Obligations of the district.
- 3.14.160 Violation--Civil penalties.
- 3.14.170 Violation--Municipal infraction.
- 3.14.010 Findings and purpose.

Whereas, the town of West Yellowstone finds that the tourism industry and tourism-related businesses are valuable and important to the continuing economic development of the town of

West Yellowstone and surrounding areas, and are important to the health and welfare of town residents and visitors; and

Whereas, the town also finds that promotion of the tourism industry is in the best interests of the town, its residents and visitors; and

Whereas, the adoption of a tourism business district, in conformance with Montana law, is a reasonable and appropriate means of promoting the tourism industry within the town;

Now, therefore, it is the purpose of this chapter to provide for the creation of a tourism business improvement district within the town with the further purpose to aid in tourism, promotion, and marketing within the district. (Ord. 244 §1, 2009)

3.14.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, motel, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms, or any portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. "Person" means any individual, firm, partnership, association, social club, fraternal organization, or any other group or combination acting as a unit.

D. "Transient" means any person who exercises occupancy or is entitled to occupancy or other agreement for a period of thirty consecutive calendar days or less. 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 a hotel and the occupant providing for a longer period of occupancy.

E. "Board of trustees" means the board, appointed by the town council, composed of not less than five or more than seven owners of property within the district or their assignees, that is responsible for developing an annual budget and work plan for the district.

F. All references to the "tourism business improvement district assessment" and "assessment" in this chapter shall refer to the tourism business improvement district passed by the required number of property owners in West Yellowstone as specified in Section 7-12-1101, MCA and as enacted by the ordinance codified in this chapter. (Ord. 244 §2, 2009)

3.14.030 Imposed.

There is imposed a duty on each operator of any of the establishments mentioned in this chapter to collect, upon sale, the assessment as set forth in this chapter. (Ord. 244 §3, 2009)

3.14.040 Tourism business improvement district assessment.

The Town shall levy an assessment on all of the property in the district by resolution in accordance with §§7-12-1132 and 1133, MCA. The assessment shall be based on per occupied room night upon all hotels with ten or more rooms within the boundaries of the tourism business improvement district provided, however, that facilities in which the majority of rooms are customarily occupied by owners, partial owners, or members of the facility shall not be subject to the assessment.

3.14.050 Boundaries.

The boundaries of the tourism business improvement district shall be noncontiguous and shall include all hotels with ten or more rooms within the established limits of the town of West Yellowstone as such limits are amended from time to time, not including areas that are zoned primarily as residential areas. (Ord. 244 §5, 2009)

3.14.060 Rate--Duration.

A. The exact rate of the tourism business improvement district assessment shall be set by resolution of the Town Council.

B. The period of duration of the tourism business improvement district shall not be for a period of longer than ten years unless the duration of the district is extended in compliance with the provisions of 7-12-1111, MCA. The initial effective date of the tourism business improvement district assessment is May 1, 2009, and assessments shall be collected on all occupied rooms from that date forward. (Ord. 244 §6, 2009) The district was extended for another 10 years in 2019 (Resolutions 721 and 722).

3.14.070 Tourism business improvement district assessment payment.

The tourism business improvement district assessments collected by a hotel in any month are to be paid to the town on or before the last day of the following month, or if such day falls on a Saturday, Sunday or holiday, then on the next business day. Tourism business improvement district assessment payments sent by mail or private courier must be received by the town on or before the last day of each month, or if such day falls on a Saturday, Sunday or holiday, then on the next business day. (Ord. 244 §7, 2009)

3.14.080 Collection duties and responsibilities.

A. The office responsible for receiving and accounts for the tourism business improvement district assessment receipts is the finance office.

B. The Town Manager and his/her agents shall be responsible for enforcing the collection of tourism business improvement district assessments and shall be responsible for overseeing the methods and procedures to be used in enforcing the collection of the tourism business

improvement district assessments. (Ord. 244 §8, 2009)

3.14.090 Records and forms.

The town shall provide each hotel that is required to collect tourism business improvement district assessments with the proper forms for reporting and making payment to the town. Tourism business improvement district assessment payments to the town shall be tabulated and accounted for on forms prescribed and furnished to the hotel by the town. The records and forms held by the town shall be confidential, and shall not be open to inspection by the public unless so ordered by a court of competent jurisdiction. Each hotel that is required to collect tourism business improvement district assessments must maintain adequate accounting records and pay the tourism business improvement district assessments to the town on the forms provided by the last day of the following month. The accounting records maintained must be accurate, verifiable, and provide a reasonable audit trail. Failure to maintain adequate accounting records constitutes a violation of this chapter. (Ord. 244 §9, 2009)

3.14.100 Preservation of records.

Every hotel required to collect and pay tourism business improvement district assessments shall keep and preserve for a period of not less than three years all records necessary to determine the accuracy of the assessments paid, and shall make these records available for audit or inspection on its business premises at all reasonable times. Any audit or inspection shall be conducted in West Yellowstone on the premises of the business or establishment collecting the tourism business improvement district assessments or at such other location as the town may determine. (Ord. 244 §10, 2009)

3.14.110 Random audit.

Periodic random audits shall be conducted under the direction of the Town Manager or his/her designated representative and all hotel operators shall cooperate in all respects in the conduct of the audits. Any random audit shall be for the previous calendar year, and shall be conducted in West Yellowstone on the premises of the hotel collecting the tourism business improvement district assessment or at such other location as the town may determine. If the audit determines a deficiency it will be at the discretion of the town to audit the previous two years and require a follow-up audit on the next reporting year. Failure to cooperate in any audit or inspection of records, including the failure to make the appropriate records available on the hotel premises in West Yellowstone, shall constitute a violation of the provisions of this chapter. Required audits will be paid for with tourism business improvement district receipts. (Ord. 244 §11, 2009)

3.14.120 Appeals.

Any hotel may appeal to the town council any assessment of penalty or interest; provided, that notice of appeal in writing is filed with the town clerk within thirty days of the serving or mailing of the determination of the amount of penalty and interest due. The town council shall on the next immediate regular town council meeting fix the time and place for hearing the appeal and the town clerk shall cause notice in writing to be personally served by a peace officer upon the

operator. The findings and decision of the town council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing or by certified mail directed to the hotel operator's last known address. Any amount found to be due shall be immediately payable upon service of the findings and decision. (Ord. 244 §12, 2009)

3.14.130 Administration and use of tourism business improvement district assessment moneys.

A. The town council shall by resolution appoint a board of trustees of not less than five or more than seven persons to administer the tourism improvement district. The board of trustees will be composed as follows: one representative from a hotel of more than one hundred rooms; two representatives from hotels of fifty to one hundred rooms; two representatives from hotels of ten to forty-nine rooms; and two representatives from the West Yellowstone hotel industry at large. No two board members may be owners of or employed by the same company. No single owner or ownership group shall be allowed to have more than one representative on the board. Three of the members who are first appointed must be designated to serve for terms of one, two, and three years, respectively, from the date of their appointments, and two must be designated to serve for terms of four years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of two years and three years, respectively. After initial appointment, members must be appointed for a term of office of four years, except that a vacancy occurring during a term must be filled for the unexpired term. A member holds office until a successor has been appointed and qualified.

B. The powers of the board of trustees in administering the district shall be as prescribed in 7-12-1131, MCA. The board of trustees shall establish policies and procedures for the operation and general management of the district.

C. The board of trustees shall submit the annual budget and work plan for the district to the town council for approval during the annual budget preparation process. (Ord. 244 §13, 2009)

3.14.140 Tourism business improvement district assessment administration.

The town shall administer tourism business improvement district assessment collections according to the following rules:

A. The town will withhold three percent of all tourism business improvement district collections not to exceed ten thousand dollars per fiscal year to offset the costs related to administering the tourism business improvement district. The town's withholding will be transferred to the general fund.

B. The town will transfer the funds collected by the town during a given month, less the three percent withholding detailed above, to a fund administered by the board of trustees after the second town council meeting of the following month.

C. Tourism business improvement district assessment payments shall be made to the town finance office by the established deadline.

D. Any hotel that fails to file a required return, statement, or other report with the town by the due date, including any extension of time of the return or report, will be assessed a late filing penalty of fifty dollars or the amount of the tax due, whichever is less.

E. Any hotel that fails to remit the tourism business improvement district assessments when due must be assessed a late payment penalty of one and two-tenths percent a month, or a fraction of a month, on the unpaid tourism business improvement district assessments. The penalty may not exceed twelve percent of the amount due. The penalty will accrue on the unpaid tourism business improvement district assessments from the original date of the return regardless of whether the hotel operator has received an extension of time for filing a return. (Ord. 244 §14, 2009)

3.14.150 Obligations of the district.

An obligation or debt of any nature of the district is not an obligation or debt of the town of West Yellowstone and in no event is a debt or obligation of the district payable out of any funds or properties of the town of West Yellowstone. The debts and obligations of the district are payable solely from the funds and properties of the district. (Ord. 244 §15, 2009)

3.14.160 Violation--Civil penalties.

For failure to report tourism business improvement district assessments when due, failure to pay tourism business improvement district assessments when due, and other violations of this chapter, the town may seek the following penalties or remedies:

- A. A court judgment in the amount of all unpaid tourism business improvement district assessments, including any unpaid administrative fees assessed under this chapter;
- B. A civil penalty in the amount of fifty percent of the unpaid tourism business improvement district assessments, plus all costs and attorney's fees incurred by the town in any court action;
- C. An order requiring the delinquent hotel to undergo a financial audit by the town or its representatives to determine the proper amount of tourism business improvement district assessments due, including payment by the business of all audit costs and expenses incurred by the town or its representatives;
- D. Revocation of the violator's town business license, either through judicial order or the administrative procedure described in Chapter 5.04;
- E. Any other penalty, remedy or judicial relief to which the town is entitled. (Ord. 244 §16, 2009)

3.14.170 Violation--Municipal infraction.

Violation of this chapter shall be punishable as a municipal infraction in accordance with Section 1.12.020. (Ord. 244 §17, 2009)