

Kalispell Tourism Business Improvement District

**BYLAWS**

**TBID District**

**July 1, 2020 – June 30, 2030**

Adopted by the Board of Trustees  
July 1, 2020

Amended July 1, 2022

# KALISPELL TOURISM BUSINESS IMPROVEMENT DISTRICT BYLAWS

## Article I Organization

- Section 1.1 Name. The name of the organization shall be the Kalispell Tourism Business Improvement District, hereafter referred to as the "TBID,"
- Section 1.2 Mission. The mission of the TBID is to generate room nights for lodging facilities in the city of Kalispell, Montana by effectively marketing our region as a preferred travel destination.
- Section 1.3 Powers. The TBID may engage in any activity consistent with the City of Kalispell law, Montana law, and these Bylaws, provided that the Board of Trustees determines that the activity is in furtherance of the purposes for which the TIBD was formed.
- Section 1.4 Definitions. The following terms used herein shall have the following definitions:
- (a) "Act" means the Montana Business Improvement District Act.
  - (b) "Appointing Authority" means the Mayor of the City of Kalispell, Montana.
  - (c) "Board" means the board of trustees of the TBID.
  - (d) "Governing Body" means the City Council of the City of Kalispell, Montana.

## Article II Board of Trustees

- Section 2.1 Board of Trustees. All corporate powers shall be exercised by or under authority of, and the business and affairs of the TBID shall be managed under the direction of, the Board of Trustees of the TBID except as may be otherwise provided in these Bylaws or by law.
- Section 2.2 Number. The Board of Trustees shall consist of not less than five or more than seven owners of hotel property within the TBID or their designees. The number of trustees of the board, once established, may be changed within these limits from time to time by resolution of the Governing Body. A resolution to reduce board membership may not require resignation of any member prior to completion of the member's appointed term.

Section 2.3 Qualifications of Trustees. Candidates for trustee should meet the following general criteria: (1) owners of land within the geographic area of the TBID or their designee, (2) committed to the well-being of the TBID, (3) respected citizen or leader, (4) able to work effectively as part of a group, (5) competent in some area of value in achieving objectives of the TBID, (6) able to maintain a commitment for the term of appointment, and (7) balances board in terms of representation of large, medium and small hotel properties as follows: 3 trustees from large hotels (106 rooms or more); 2 trustees from medium hotels (60 to 104 rooms); and 2 trustees from small hotels (59 rooms and under).

Section 2.4 Nominations. Nominations for the Board of the TBID shall be made according to the guidelines established by the City of Kalispell.

Section 2.5 Appointment. Seven initial trustees have been appointed by the Governing Body in City of Kalispell Ordinance 1833, and future trustees shall be appointed by the Appointing Authority and approved by the Governing Body utilizing the following nomination and election process:

- Notice of board vacancy and request for nomination for hotel category being vacated sent to all TBID members on record.
- Interested Hotel owner or authorized designee submits board application.
- TBID board may offer a nominee recommendation to the Appointing Authority for approval by the Governing Body.

If a nomination from the appropriate vacating hotel category is not submitted, the TBID board may request nominations from the other hotel category. The interim trustee will serve out the term in full or until a nomination is received from the vacated hotel categories. If a nomination is submitted by the vacated hotel category during the term, a special ballot and election shall be held. That recommendation will be forwarded to the Appointing Authority for approval by the Governing Body immediately.

Section 2.6 Term. Three of the trustees who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member board, there must be two additional appointments for terms of 2 years and 3 years, respectively. After initial appointment, trustees must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A trustee shall hold office until the trustee's successor has been appointed and qualified,

Section 2.7 Absences. If, within a period of twelve (12) consecutive months, any trustee is absent from three (3) or more regular Board meetings, notice of which has been given to the trustee at the trustee's usual place of work or residence, or by announcement at a meeting attended by the trustee, the Chairman may call such absences to the attention of the Board which may then recommend to the Appointing Authority that such trustee be removed and that another person be appointed to serve for the unexpired term.

Section 2.8 Resignation, Removal and Vacancies. A trustee may resign at any time by delivering written notice to the Board. A trustee's resignation is effective upon delivery of the notice of resignation unless the Board authorizes otherwise. A member of the Board may be removed by the Appointing Authority, with the consent of the Governing Body. A vacancy on the Board shall be filled by the Appointing Authority, with the approval of the Governing Body.

Section 2.9 Powers and Duties. The Board shall have those powers set forth in the Act, The Board's responsibilities shall include, without limitation, (1) administration of the TBID, including oversight of expenditure of its funds; (2) the establishment of goals and policies for the TBID, (3) providing annual budgets and work plans to the Governing Body for approval each fiscal year; (4) nomination of trustees for the TBID to the Appointing Authority and Governing Body; (5) recommending to the Governing Body for approval each fiscal year a method of levying an assessment on the property within the TBID that will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received; (6) appointment of a director of the TBID; (7) approval and implementation of projects and programs to be undertaken or administered in furtherance of the objectives of the TBID and the purposes of the Act, (8) compliance with the requirements of the Act, and (9) long range and strategic planning.

Section 2.10 No Compensation. Members of the Board may receive no compensation.

### **Article III Meetings of the Board**

Section 3.1 Regular Board Meetings. The regular monthly meetings of the Board shall be held at a time and location determined by the Board. Notice of such meetings shall be provided by telephone, telefax, U.S. mail, e-mail, or other communication, at least seventy-two hours before the regular meeting is to occur. Public notice of regular Board meetings shall be provided to the City of Kalispell City Clerk's office and can also be provided via news release, web site, newspaper advertisement or other method determined by the Board to inform the community.

Section 3.2 Special Board Meetings. The Chair or any officer and two members of the Board may call a special meeting of the Board upon at least seventy-two hours' notice as provided in Section 3.1 to each member of the Board. Such notice shall state the purpose for which such special meeting is called.

Section 3.3 Quorum. A quorum of the Board consists of a majority of the number of trustees in office immediately before the meeting begins. Trustees may be in attendance at any meeting in person or by telephone connection, but any such connection shall permit any trustee not attending in person to hear all discussion concerning any item upon which action is to be taken and shall permit all persons in attendance to hear the trustee attending by telephone.

Section 3.4 Board Action. If a quorum is present at a meeting of the Board, then the<sup>4</sup>

affirmative majority vote of the trustees present at the meeting shall constitute the act of the Board. The Board may not take any action unless a quorum of the Board is present, except a majority of less than a quorum may adjourn the meeting from time to time without further notice. Each trustee shall have one (1) vote.

Section 3.5 Proxy Prohibition. No proxy voting shall be permitted.

Section 3.6 Committees. The Board may designate and establish such committees and task forces as it considers appropriate to carry into effect the objectives and purposes of the TBID. Committee chairs will be appointed by the Chair of the Board. Committee meetings or task force meetings may be called at any time by the chairperson of the committee or task force or by the Chair of the Board. At any duly called meeting of a committee or task force, those present shall constitute a quorum. Each committee and task force shall study, investigate and make recommendations to the Board on subjects within the general scope of activity assigned it by the Chair of the Board or which subsequently may be referred to it by the Chair of the Board or by the Board.

#### **Article IV Officers**

Section 4.1 Officers. There shall be a Chair, a Vice Chair, a Secretary/Treasurer and TBID Executive Director of the Board who shall be the officers of TBID. In the absence of the Chair the Vice Chair shall act as chairman. The Executive Director is a non-voting member of the Board.

Section 4.2 Election of Officers. Officers shall be elected annually by the Board at the last regular meeting of the fiscal year. Any officer may sign all official documents on behalf of the organization upon approval by the Board and shall have such other duties as the Board may direct. Officer terms shall coincide with the terms of board trustees, May 1 – April 30. Officers shall be elected annually by the Board at the last regular meeting of the term year. Vice Chair officer shall be appointed to Chair position, secretary/treasurer and vice-chair positions are selected by the board. List of appointed officers is sent to the Appointing Authority for their records.

Section 4.3 Chair. The Chair shall preside at all meetings of the Board and at any other meetings of the TBID. The Chair shall appoint members to such committees and task forces as are created by the Board of Directors. The initial chair shall be appointed by the Mayor of the City of Kalispell, pursuant to §7-12-1122 M.C.A. The term of office of the Chair shall be for one year or until his/her successor is elected.

Section 4.4 Vice Chair. The Vice Chair shall perform the duties and exercise the powers of the Chair in the absence or disability of the Chair and shall perform any other duties as prescribed by the Board of Directors.

Section 4.5 Secretary/Treasurer. The secretary/treasurer shall keep a record of all proceedings, minutes of meetings, certificates, contracts and corporate acts of the Board and shall be responsible for oversight of the financial records of the organization. The<sup>5</sup>

Board may appoint an assistant secretary/treasurer who need not be a member of the Board.

- Section 4.6 Executive Director. An Executive Director of the TBID shall be appointed by the Board. The Executive Director must be the executive director of a nonprofit convention and visitor bureau, as defined in 15-65-101, M.C.A., if a nonprofit convention and visitors bureau is operating within the Governing Body's jurisdiction. The Executive Director shall be charged with the general supervision and management of the business affairs of the TBID. The Executive Director shall be the chief executive officer and shall be charged with initiating and implementing the marketing plan, budget and related projects, the general supervision over employees, including their duties and compensation in conformity with the policies approved by the Board. The Executive Director shall keep the minutes of the Board meetings, keep other records as the Board may direct, and perform such other duties as may be prescribed by the Board, these Bylaws, or by law. The Executive Director shall so manage the affairs of the TBID as to promote the objectives for which the TBID is organized.
- Section 4.7 Other Officer Duties. The Board may provide such additional duties for any officer, as it deems necessary.
- Section 4.8 Officer Vacancy. A vacancy in any office shall be filled by the Board at its next regular meeting for the remainder of the unexpired term.

## **Article V Conflict of Interest**

- Section 5.1 Conflict of Interest. A conflict of interest transaction is a transaction with the TBID in which a trustee of the TBID has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the interested trustee if the transaction was fair at the time it was entered into or is approved pursuant to Mont. Code Ann. §35-2-418. However, in no event shall the interested trustee vote on the decision to enter into such transaction. Any trustee having an interest or conflict in a transaction presented to the Board for authorization, approval, or ratification shall make a prompt, full and frank disclosure of his or her interest to the Board prior to its acting on such transaction. Such disclosure shall include any relevant and material facts, known to such person, about the transaction which might reasonably be construed to be averse to the TBID's interest. The Board shall thereupon determine, by majority vote, whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist. If a conflict is deemed to exist, such trustee shall not vote on, nor use his or her personal influence on, nor participate (other than to present factual information or to respond to questions) in the discussions or deliberations with respect to such contract or transaction, nor shall the trustee be counted in determining the quorum for the meeting. The minutes of the meeting will, upon request, reflect that a disclosure was made, the action taken with respect to such disclosure, and, if applicable, the abstention from voting and the presence of a quorum.

**Article VI**  
**Administrative and Financial Provisions**

- Section 6.1 Fiscal Year. The fiscal year of TBID shall be July 1 - June 30.
- Section 6.2 Check Writing Authority. The Board shall establish limits on the check writing authority of trustees, officers, employees, and agents of TBID.
- Section 6.3 Budget and Marketing Plan. Expenditure of all income shall be allocated to meet the operating needs of the TBID under a budget and marketing plan prepared by the Executive Director and adopted by the Board and the Governing Authority. The Executive Director shall make a cumulative report each month to the Board on income and expenditures. The approved budget and marketing plan shall be reviewed as requested by the Board to assure that funds are being expended as allocated and to determine if any reallocation of resources is needed.
- Section 6.4 Disbursements. Upon approval of the Fiscal Year Budget by the Board and the Governing Body, the Executive Director is authorized to make such disbursements as necessary on accounts and expenses provided for in that budget, without additional approval from the Board. Such disbursements may be made by check and require anyone of the following signatures: Executive Director or Chair or any designated trustee(s). Checks shall be supported by proper requisitions, vouchers, statements, or other evidence showing the expenditure to be appropriate and authorized under the budget.
- Section 6.5 Indebtedness. No loan or advance shall be made or contracted on behalf of the TBID, and no note, bond, or other evidence of indebtedness shall be executed or delivered in its name except in the manner provided by law and as authorized by the Board.
- Section 6.6 Public Records. All financial records of the TBID related to assessments are public documents and shall be made available to any member of the public who wishes to see them, provided arrangements are made in advance to review said records in the office of the TBID during regular office hours. Approval of a majority of the Board shall be required to remove any financial record of the TBID from the public file.
- Section 6.7 Audit. The Board shall engage an independent certified public accounting firm to audit, annually, all general and special accounts of the TBID in accordance with the standards established by the City of Kalispell. The firm may be instructed to perform unannounced audits at any given period of the year for verification of accounts, in addition to the annual audit. The Board may from time-to-time audit hotel reports of occupancy to assure proper collections of assessments. All audit results should be distributed in writing on a timely basis to the Board.
- Section 6.8 Use of Assessments. Assessments collected by the TIBD shall be used for the following purposes:
- (a) The funding of all uses and projects for tourism promotion and management within Kalispell as specified in the Kalispell TBID budget;

- and
- (b) The marketing of convention and trade shows that benefit local tourism and lodging businesses in Kalispell; and
  - (c) The marketing of Kalispell to the travel industry to benefit local tourism and the lodging businesses located within the Kalispell TBID; and
  - (d) The marketing of Kalispell to recruit major sporting events to promote local tourism and to benefit the lodging businesses within the Kalispell TBID.

Section 6.9 Spokesperson. Only the Chair of the Board, the Executive Director, or designee shall have authority to speak on behalf of, or to issue press releases for, the Board or the TBID

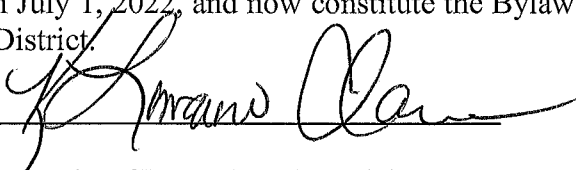
### **Article VII Amendments**

Section 7.1 These Bylaws may be amended or repealed, and new Bylaws adopted by the Board any regular or special meetings of the Board by the affirmative vote of at least two-thirds (2/3) of the trustees. Changes to the Bylaws to be reviewed by the City of Kalispell prior to adoption.

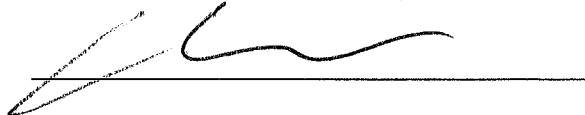
Section 7.2 Associate Membership to the TBID. TBID Associate Membership is available to lodging properties with a Kalispell physical address upon approval by the TBID Board of Directors. See Appendix A of the TBID By Laws for terms of agreement.

### **CERTIFICATE OF ADOPTION OF BYLAWS**

The undersigned hereby certifies that the above Bylaws of the **Kalispell Tourism Business Improvement District** were duly adopted by majority vote of the Board of Directors at a duly held meeting on July 1, 2020, and amended on July 1, 2022, and now constitute the Bylaws of the Kalispell Tourism Business Improvement District.



**Lorraine Clarno, President/CEO  
Discover Kalispell Chamber of  
Commerce/Convention & Visitor Bureau**



**Bryce Baker, TBID Board Chair  
General Manager My Place Kalispell**

## **APPENDIX A to the TBID By Laws**

### **REGULATION OF ASSOCIATE MEMBERSHIP TO THE KALISPELL TOURISM IMPROVEMENT DISTRICT**

#### APPROVAL

Kalispell TBID Associate Membership is available to lodging properties with a Kalispell physical address. A property receives approval as a TBID Associate Membership by the TBID Board of Directors. Requesting property submits a letter of request to Discover Kalispell - the Kalispell Convention & Visitor Bureau, outlining the property specifications and acknowledgement of the terms of the Kalispell TBID Associate Member contract and TBID Bylaws. That request is then submitted to the TBID Board of Directors for approval at the next available scheduled monthly Board meeting. Contract is signed by the TBID Chairman of the Board and returned to requesting property for signature by property owner.

#### TERMS OF AGREEMENT

Term: Effective the date of signed contract and remain in force until the end of the established district (June 30, 2030) or until ownership change. Upon a change of property ownership new owner reapplies within 30 days of taking over. If application is not received within 30 days property is removed from all TBID marketing. If the new owner chooses to submit a request for Associate Membership, the TBID Reinstatement policy takes effect.

Termination without Cause: Penalty for early termination - \$5,000 -For purposes of marketing costs recoupment.

Termination with Cause: Either party may terminate this Agreement, for cause, if either Party notifies the other Party of a material breach of any provision of the Agreement. The breaching Party shall have thirty (30) days following notice to cure the breach. The notice shall specify the alleged breach and the date on which termination will be effective unless such breach is cured to the satisfaction of the non-breaching Party within the time period allowed.

#### BENEFITS

TBID agrees to promote the subject property equally to the TBID members within the established district in marketing initiatives produced with TBID funds. This includes DiscoverKalispell.com, Kalispell visitor guide, social media platforms, e-marketing, online marketing, group/meeting and convention RFPs, and opportunities to promote lodging packages or other initiatives determined by Discover Kalispell and TBID.

#### TBID BOARD OF DIRECTORS

TBID Associate Members may apply for a board trustee position when a vacancy is available. Only one Associate Member property can be a voting member of board at one time. Associate Member representatives may serve as ex-officio non-voting members and attend TBID board of directors' meetings.

#### CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

During the term of the Agreement, the Parties anticipate that certain information and intellectual property will be developed for the purposes of the Discover Kalispell Chamber/CVB and the TBID's mission and activities. Said confidential information and intellectual property includes, but is not limited to, databases, lists, customer lists, financial and proprietary information, concepts, documents, materials,

trade secrets, business contacts, and ideas about current and future projects which the Discover Kalispell Chamber/CVB or TBID regards as confidential.

#### INDEMNIFICATION

The TBID and the associate member will agree to indemnify the other party for any damages caused to the indemnified party by the negligent action of the indemnifier.

#### SPOKESPERSON

Only the Chair of the Board, the Executive Director, or their designee shall have authority to speak on behalf of, or to issue press releases for, the Board of the TBID.

#### PAYMENTS

TBID Associate Members shall abide by the TBID General Payment Instructions and Payment Reporting policy. Payments are made quarterly to the City of Kalispell. Payment and reporting form must be received or postmarked on the last day of the reporting quarter. The instructions and reporting form shall be attached as Addendum B.

## **APPENDIX B to the TBID By Laws**

### **KALISPELL TOURISM BUSINESS IMPROVEMENT DISTRICT GENERAL PAYMENT POLICY**

#### **Reporting and remitting assessment**

Each lodging facility shall, on or before the last day of the month following the close of each fiscal year quarter, complete the Tourism Business Improvement District reporting form which shows the total number of rooms occupied during the reporting period, and the amount of assessment collected from all occupied rooms and explanation of any fee exemptions (comp rooms, 30-day continuous rentals). Returns are due immediately upon cessation of business for any reason. All assessments collected by lodging facility shall be held in trust for the account of the Tourism Business Improvement District of Kalispell, Montana until payment thereof is made to the Kalispell City Treasurer.

#### **Records to be kept**

It shall be the duty of every lodging facility liable for the collection and payment of any assessment imposed, to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such assessment as may have been liable for the collection of and payment to the Kalispell City Treasurer.

#### **Quarterly Payments**

Quarterly payments of TBID fees collected are due the last day of the month following the close of the reporting quarter. Payment must be accompanied by a completed reporting form.

1st Quarter – July, August, September Payment must be received or postmarked October 31

2nd Quarter – Oct, Nov, Dec Payment must be received or postmarked January 31

3rd Quarter – January, February, March Payment must be received or postmarked April 30

4th Quarter – April, May, June Payment must be received or postmarked July 31

#### **Delinquent payment - Penalties and interest**

Any lodging facility that fails to file a required payment and reporting form with Kalispell City Treasurer by the due date will be assessed a late filing penalty under the following schedule:

1. A penalty of two hundred and fifty dollars (\$250.00) for the first delinquency within the TBID's fiscal year
2. A penalty of seven hundred and fifty dollars (\$750.00) for the second delinquency within the TBID's fiscal year
3. A penalty of one thousand two hundred and fifty dollars (\$1,250.00) for the third delinquency within the TBID's fiscal year
4. A penalty of one thousand five hundred dollars (\$1,500.00) for the fourth delinquency within the TBID's fiscal year

The penalty accrues on the unpaid TBID fees from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

Unpaid penalties within the same fiscal year will rollover to the new fiscal year until the payer has completely cleared their debt.

**Failure to collect and report**

If any lodging facility fails or refuses to collect the assessment and to make, within the time provided for report and remittance of the assessment or any portion thereof required, the TBID Board of Directors will issue a certified letter to the facility instructing that if payment and reporting form are not received in 10 days from receipt of the letter, the Kalispell City Treasurer will be notified, and the following collection process will be executed:

A. Kalispell City Treasurer shall proceed in manner which assumes full occupancy for all rooms of the hotel property for the purpose of estimating the base upon which to calculate the assessment due. The Kalispell City Treasurer shall proceed to determine and assess against such lodging facility, the assessment and penalties.

B. In case such determination is made, the Kalispell City Treasurer shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the lodging facility so assessed at its last known place of address. Such lodging facility may, within 10 days after the serving or mailing of such notice, make application in writing to the Kalispell City Treasurer for a hearing on the amount assessed.

C. If application by the lodging facility for a hearing is not made within the time prescribed, the assessment, and penalties, if any, determined by the Kalispell City Treasurer, shall become final and conclusive and immediately due and payable. If such application is made, the Kalispell City Treasurer shall give not less than five days' written notice to the lodging facility, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such assessment and penalties.

D. At such hearing, the lodging facility may appear and offer evidence why such specified assessment and penalties should not be so fixed. After such hearing, the Kalispell City Treasurer shall determine the proper assessment to be remitted and shall thereafter give written notice to the lodging facility in the manner prescribed herein of such determination and the amount of such assessment and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken.

**Actions To Collect.**

Any assessment required to be paid by the lodging facility shall be deemed a debt owed by the lodging facility to the Tourism Business Improvement District and placed on the lodging facility's property tax bill by Flathead County.

**Payment and reporting form must be received or postmarked on the last day of the month following the close of the reporting quarter.**

1st Quarter – July, August, September	Due October 31
2nd Quarter – October, November December	Due January 31
3rd Quarter – January, February, March	Due April 30
4th Quarter – April, May, June	Due July 31