

ADISORY OPINION 2021-01

CITY OF DURANGO BOARD OF ETHICS

In response to a Request for an Advisory Opinion received from City Councilor, Melissa Youssef, dated December 23, 2020 (copy attached), the City of Durango Board of Ethics (BOE) called a special meeting and met with Councilor Youssef on Thursday, January 7, 2020, to discuss her request, which involves a potential conflict of interest resulting from the fact that her husband, Jim Youssef, is a member of the Board of Directors of the Durango Creative District.

The salient facts, as reflected in the December 23rd request and discussions with Councilor Youssef on January 7th, include the following:

- The Durango City Council is being asked to consider the placement of a measure on the ballot at the City election in April of 2021, to increase the existing Lodgers' tax in the City from 2% to 5%.
- Historically, Lodgers' Tax revenues have been allocated to: (1) Visit Durango, or its predecessors in interest, for marketing of the community to increase tourism, and (2) the City of Durango for a portion of the Transit budget, special events, and the defrayal of administrative expenses related to Lodgers' Tax collection and distribution.
- In 2020, the City allocated \$40,000 to assist in the formation of the Durango Creative District (DCD). The DCD is one of 24 within the State of Colorado. Creative Districts in other communities have helped secure large grants, assisted in the improvement of public infrastructure, developed signature events, installed public art, and assisted the development of affordable housing.
- The DCD has asked, or will be asking the City Council to allocate additional funds from the Lodgers' Tax to the District, if the proposed increase in Lodgers' Tax is approved by the voters.
- Councilor Youssef's husband, Dr. Jim Youssef, is a member of the DCD Board, as well as the District's Executive Board, and chairs the District's Strategic Planning Committee. Dr. Youssef receives no compensation from the District for any of these services.

The Board discussed the situation at some length and notwithstanding the fact that the Code of Conduct and Code of Ethics provides that a membership on a nonprofit board constitutes an interest, the Board was of the opinion that a true conflict of interest did not exist. The definition of "Interest" in the City's Code of Conduct and Code of Ethics focuses on economic benefit or avoidance of economic loss. The Durango City Code (Article VII, Section 2-201) provides, in part, that *"the term Interest is intended to reflect a pecuniary, property, or commercial benefit, or any other benefit the primary significance of which is economic gain or the avoidance of*

economic loss...” The Board was of the consensus that there clearly was no economic gain or avoidance of economic loss involved in the situation presented to the Board.

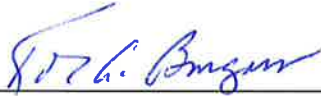
The Board also discussed the fact that the Code of Conduct and Code of Ethics requires City Officials to:

- avoid situations which may create an appearance of impropriety [Article VII, Section 2-202(a) and Section 2-203 (15)] ;and
- disclose any Interest (as defined in Section 2-201) in a matter pending or being considered by the governing body prior to the vote [Article VII, Section 2-205(b)].

The Board was of the opinion that both of these issues could be successfully addressed by a full disclosure of Jim Youssef’s membership on the DCD Board prior to any discussion of the Lodger’s Tax increase or the allocation of Lodgers’ Tax proceeds by the City Council.

It was the opinion of the Board that recusal by Councilor Youssef was not required as long as any participation was preceded by a full disclosure, on the record, of her husband’s membership on the Durango Creative District Board, the fact that this is a non-compensated position, and that there is no monetary benefit to either of them irrespective of whatever decisions might be made.

Issued by the City of Durango Board of Ethics on January 14, 20201.



Chair, Katherine Burgess

Sitter, Suzanne

From: Nelson, Dirk
Sent: Wednesday, December 30, 2020 8:59 AM
To: Sitter, Suzanne
Subject: FW: Code of Ethics Advisory Opinion Request

Dirk W. Nelson
Durango City Attorney
(970) 375-5007
dirk.nelson@durangogov.org

From: Melissa Youssef <MelissaYoussef@durangogov.org>
Sent: Wednesday, December 23, 2020 4:06 PM
To: Katherine Burgess <katherineburgess@outlook.com>; Laurie Meininger <laurie.j.meininger@gmail.com>
Cc: Nelson, Dirk <dirk.nelson@durangogov.org>
Subject: Code of Ethics Advisory Opinion Request

Dear Katherine and Laurie~

I am writing this e-mail seeking an advisory opinion from the Board of Ethics regarding my participation in discussions and voting on putting a proposed increase in the Lodger's Tax on the April 2021 ballot, and being a part of the discussions to determine allocations of potential funding increases between Visit Durango, Durango Creative District, and the city of Durango.

Factual Issues:

Several groups have been working together to collaborate on a request to council to place a ballot item on the April 2021 election that would ask the voters to increase lodgers tax in the city of Durango by 3%. The current lodgers tax rate is 2% If approved by the voters the new lodgers tax would be 5%. The Colorado average lodger's tax is 3.6%.

VISIT DURANGO

Visit Durango White Paper in support of a 3.0% increase in Lodgers Tax, presents the following facts in their paper:

Visit Durango has suggested that they need a significant portion of the recommended increase 2.5% to go to their Destination Marketing Organization annual budget to allow them to increase marketing for Durango to increase tourism and subsequent impacts to related industries. IN 2021 their anticipated budget is \$1 million. With the increase their budget would increase to \$2.8 million - \$4 million.

The stakeholders involved in this discussion are:

- 1) City council and staff
- 2) Visit Durango + 3% (2.5%/.5%)
- 3) DAHLA (2.5%/.5%)
- 4) Durango Creative District (2%/1%)
- 5) STEAM/DACE - Withdrawn
- 6) Resident Voters

Uses of Lodgers Tax:

In Durango of the current 2% LT, 60% Visit Durango/40% Events & Transportation (city of Durango)

-Throughout the US on average 72% of LTs are used towards DMOs. The other 18% Typical Uses in US:

- Historical Restoration
- Preservation Projects
- Convention Centers
- Promotion of the Arts
- Sporting Event Promotions or a Sporting Commission
- Tourist-Focused Transportation
- Wayfinding
- Not Affordable Housing

For the next 5 years Visit Durango will focus on:

- Marketing the Durango area as a visitor destination for domestic and international visitors.
- Marketing the Durango area to groups, meetings, sporting events, and conventions.
- Marketing the Durango to bring in more visitors in off-peak season (Nov-Mar).
- Advocate for product development and opening tourism-related

Based on Stakeholder Input. the goals for Visit Durango for 2021 are:

- 1) Support a more consistent, year-round economy, including extended stays.
- 2) Attract responsible visitors and steward the Durango area's natural resources.
- 3) Increase the overall positive experience of the Durango area for visitors.
- 4) Increase the quality of life for residents and educate to the value of tourism.
- 5) Educate tourism stakeholders and advocate on their behalf.
- 6) Assist tourism stakeholders with economic recovery.

The goal of increased tourism on the region include:

- DESTINATION MARKETING: External advertising & communication to bring in increased visitation. "Heads in beds"
- ECONOMIC IMPACT: Overnight stays, restaurant patronage, and shopping brings money to the economy in multiple ways.
- QUALITY OF LIFE: Destination marketing and economic development should improve quality of life.

-Restaurants that support the Visit Durango White Paper presentation to council: Chimayo, The Diamond Bell, The Office, Mahogany Grill

-Attractions and Tours support for the White Paper: Powerhouse Science Center, DSNRR, Rivertrippers

-Hotel support for the White Paper: The Hampton Inn, Strater Hotel, Adventure Inn

-Associations that support the White Paper: The Chamber, DAHLA, Historic Downtown North Main Lodgers Tax Question

How the vote might impact the Creative District

The activities of the Creative District

If he receives any compensation from that board

How they are otherwise funded

If council decides to place ballot language on the April 2021 ballot for voter consideration, Visit Durango is suggesting the following language:

BALLOT MEASURE April 2021

TO PROVIDE FUNDING FOR SUSTAINABLE AND RESPONSIBLE VISITOR MANAGEMENT AND MARKETING, AND THE FUNDING OF THE CITY CULTURAL FUND, WHICH SUPPORTS DURANGO CULTURAL ORGANIZATIONS, FACILITIES, AND EVENTS, INCLUDING THE DURANGO CREATIVE DISTRICT, AND, SHALL THE CITY OF DURANGO INCREASE THE LODGERS TAX RATE BY 3%, AND DISTRIBUTE 2.5% OF THAT INCREASE TO THE MANAGEMENT AND MARKETING OF DURANGO TOURISM AND .5% TO THE CITY CULTURAL FUND WHICH SUPPORTS VISITATION

HISTORICAL LODGER'S TAX TOTAL REVENUE AND DISTRIBUTIONS:

| Durango Tourism Fund 2011-2021(proposed) | | | | | | | |
|--|---------------|----------------------|-------------------|-------------------|---------------------|-------------------------------|---------|
| Lodger's Tax | Total Revenue | Lodger's Tax Revenue | Other Revenue (1) | Total Expenditure | DATO/ Visit Durango | Other Contracted Services (2) | Transit |
| 2021 | \$ 805,000 | \$ 805,000 | \$ - | \$ 954,627 | \$ 609,627 | \$ - | \$ 2 |
| 2020 | \$ 805,000 | \$ 805,000 | \$ - | \$ 754,607 | \$ 754,607 | \$ - | \$ |
| 2019 | \$ 1,098,598 | \$ 1,098,598 | \$ - | \$ 1,212,113 | \$ 740,576 | \$ - | \$ 3 |
| 2018 | \$ 1,035,151 | \$ 1,035,151 | \$ - | \$ 1,074,246 | \$ 704,450 | \$ - | \$ 2 |
| 2017 | \$ 1,067,684 | \$ 1,067,684 | \$ - | \$ 1,021,820 | \$ 683,920 | \$ 6,777 | \$ 2 |
| 2016 | \$ 1,062,509 | \$ 1,062,509 | \$ - | \$ 1,056,000 | \$ 697,000 | \$ 89,000 | \$ 2 |
| 2015 | \$ 1,040,572 | \$ 974,572 | \$ 66,000 | \$ 958,775 | \$ 644,000 | \$ 95,355 | \$ 1 |
| 2014 | \$ 985,179 | \$ 918,679 | \$ 66,500 | \$ 937,227 | \$ 631,992 | \$ 128,000 | \$ 1 |
| 2013 | \$ 845,832 | \$ 820,832 | \$ 25,000 | \$ 773,276 | \$ 582,000 | \$ 35,000 | \$ 1 |
| 2012 | \$ 764,267 | \$ 764,267 | | \$ 737,248 | \$ 582,000 | \$ - | \$ 1 |
| 2011 | \$ 722,041 | \$ 722,041 | | \$ 717,253 | \$ 562,912 | \$ - | \$ 1 |

Note: Numbers in *blue italics* are 2021 budgeted, and 2020 estimated actuals numbers. Other numbers are actual.

(1) Other revenues include grants and other contributions

(2) Other Contracted Services have historically been additional requests for special projects from DATO/Visit Durango.

(3) Special Events: Amount budgeted for Special Events will be reduced based on actuals in 2021. Special events were cancelled for 2021.

LODGER'S TAX ORDINANCE:

For reference the Lodger's Tax Ordinance states:

All expenditures of revenue derived from the imposition of tax hereby authorized shall be for one (1) or more of the purposes designated in [section 23-87](#) of this article and shall be in accordance with budgetary limitations and specific proposals submitted to and approved by the city council, as the same may occur from time to time. Approval of fund expenditures shall be accomplished through adoption of a resolution or resolutions by the city council detailing the purpose and extent of such expenditures.

Sec. 23-87. - Purpose.

[SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD \(DOCX\) OF SECTIONEMAIL SECTIONCOMPARE VERSIONS](#)

The purpose of this article is to impose a tax which will be borne by transient persons using commercial lodging accommodations in the city. The tax will provide revenues for advertising the community, improving its transportation services, financing new facilities, attracting conferences, conventions and meetings of a commercial, cultural, educational and social nature to the city and to allocate a portion of the revenue derived therefrom for administrative and clerical expenses.

(Code 1962, § 5-18-2)

DURANGO CREATIVE DISTRICT

The Durango Creative District was awarded official certification by the Office of Economic Development and Trade in December of 2019.

From a Durango Herald Article, verbatim:

“The certification caps the city’s third attempt at organizing a creative district and more than a year of work that involved hundreds of residents in the planning process.

Right after receiving certification, [the district](#) seated 14 board members who will direct the new organization focused on uniting, celebrating and expanding the creative economy, a news release said. In January, the district’s administrative office will open at Durango Arts Center.

Durango’s new district is among 23 others in Colorado promoted by the state as destinations. Certified districts elsewhere have also helped towns secure large grants, improve public infrastructure, develop signature events, install public art and develop affordable housing, Kirkman said.”

Durango Creative District Mission & Vision

Mission: To celebrate, unite and expand our local creative economy.

Vision: A thriving local economy stimulated by essential creative experiences.

5 year goal:

- ● \$30/person investment in the arts (up from about \$1/person)
- ● Be the conduit for a block grants to be administered by the Creative District in coordination with the City

- • Conduct a creative economy impact assessment
- • Form regional marketing partnerships
- • Position Durango as a thriving place to live, work and visit for arts and culture

Tiered Funding Example (based on City's prior investment and studies of other arts districts): If the DCD received funding, they would distribute funding to other non-profits to help them become more sustainable organizations in our community providing economic value and output.

- • Tier 1: Arts & Culture institutions with Facilities Maintenance (proposed 40%)
- • Tier 2: Operating Grants for institutions >\$400,000 budget (proposed 40%)
- • Tier 3: Operating Grants for institutions <\$400,000 budget (proposed 20%)

Durango Creative District Projects

- • Signage, wayfinding
- • Directory of Creatives
- • Regional marketing with Mancos, Telluride, and Ignacio
- • Administering annual block grants to creative institutions
- • Implementation of creative loan fund with First Southwest Bank
- • Collaborative fundraising and advertising
- • Supporting existing institutions
- • Additional projects as identified in the Strategic Plan (under development)

Ultimately the city provided \$40,000 in 2020 for the creation of the DCD.

Another \$40,000 is budgeted for the DCD in 2021 from the City of Durango General Fund. (To be confirmed with Jose).

The DCD supports a level of funding above 1/2% for the following reasons:

- A 1% allocation will allow funding for special projects and "big ideas" (i.e. mesa park music venue, buckley park music venue, upgrades to existing cultural facilities, placemaking infrastructure, CEC and Parks & Rec joint projects, etc.) The 1/2% level would not leave much for new projects or new facilities as the majority of funds would support existing organizations.
- 1/2% only provides 4% of each organization's budget. While helpful, this level is very modest in both funding and impact. The Cultural plan and comparative data set indicates the 1% funding level results in the \$25 -\$30 per capita funding level is in line with comparable communities.
- The DCD wants to achieve the goals as set out in the Cultural plan and Comp plan Chapter 11. The DCD will be asking for a study session to discuss the 7 goals and associated action steps of the draft Cultural plan.
- A small allocation from the relatively larger marketing budget can greatly increase the cultural/content funding. The DCD believes this is a higher and better use of funds than the incremental traditional marketing benefit. Content IS marketing, as the facilities and events draw visitors by providing Top of Feed content. The DCD will continue planning and coordination with VisitDurango on visitor experience management.
- A significant allocation to the Cultural fund will help the LT pass at the ballot, as this aspect will be attractive to quality of life and economic diversity/resiliency voters who don't necessarily want to see more tourism.

EXAMPLE OF POTENTIAL FUNDING DISTRIBUTION AND ALLOCATION IF PASSED WITH EXAMPLE OF .5% TO ARTS, 2% TO VISIT DURANGO AND .5% TO THE CITY OF DURANGO FOR TRANSPORTATION

- Total tax increase = 3%, ~\$1,651,350
 - Arts = .5%, ~\$275,255
 - Marketing = 2%, ~\$1,100,900 (effectively doubling the Visit Durango budget)
 - Transportation = .5%, ~\$275,255

JIM YOUSSEF'S PARTICIPATION IN THE DCD:

Jim Youssef is Melissa Youssef's husband. Jim has been involved with the DCD since January of 2020. He currently chair of the Strategic Planning Committee and is a member of the Executive Board carrying out the mission and vision of the DCD. Jim receives no compensation for his involvement on the board of the DCD. Jim has helped the organization in planning, creation of the Cultural Plan for the DCD, and fundraising.

REQUEST OF THE BOARD OF ETHICS:

I am requesting that the Board of Ethics provide me with an official advisory opinion. The council will be discussing and voting on whether or not they will place language on the ballot for April of 2021 that seeks to increase the Lodger's Tax. As part of this discussion, council will determine the percentage allocations that would go to Visit Durango, the Creative District and/or the City of Durango. Because of Jim Youssef's involvement in the Durango Creative District, I am seeking an official advisory opinion from the Board of Ethics on whether or not I can participate and vote in these discussions.

Timing: Council will be discussing this issue on January 12th in a study session. The Board of Ethics is not scheduled to meet until January 14th, so I would request a special meeting of the Board of Ethics prior to January 12th to provide me with an advisory opinion. If the Board of Ethics is not able to meet prior to January 12th, I would appreciate you letting me know as soon as possible so I can let council know the status.

Thank you for your consideration of this request.

Respectfully,

Melissa Youssef, Durango City Council

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