

10/15/07

RESOLUTION NUMBER R- 303077

DATE OF FINAL PASSAGE NOV 5 2007

A RESOLUTION OF INTENTION TO ESTABLISH A TOURISM MARKETING DISTRICT; TO LEVY ASSESSMENTS FOR A PERIOD OF FIVE (5) YEARS; TO DIRECT THE MAILING OF BALLOTS TO AFFECTED BUSINESSES; TO SET DATES FOR A NOTICED PUBLIC MEETING FOR THE PURPOSE OF RECEIVING TESTIMONY AND A PUBLIC HEARING TO COUNT BALLOTS, CONSIDER PROTESTS AND ESTABLISH THE DISTRICT; AND TO APPROVE THE TOURISM MARKETING DISTRICT (TMD) MANAGEMENT PLAN.

WHEREAS, on May 22, 2007, the Council of the City of San Diego adopted Ordinance O-19622 N.S., an ordinance amending Chapter 6, Article 1 of the San Diego Municipal Code by adding Division 25, the San Diego Tourism Marketing District Procedural Ordinance, effective date June 29, 2007; and

WHEREAS, the aforementioned procedural ordinance prescribes certain steps to be taken for the establishment of a Tourism Marketing District (TMD) within the City of San Diego; and

WHEREAS, the City of San Diego has been working with members of the lodging industry, including the San Diego Lodging Industry Association and the San Diego County Hotel & Motel Association regarding the industry's desire to establish a San Diego Tourism Marketing District (TMD) and to levy an assessment on lodging businesses within the City; and

WHEREAS, the lodging industry has worked with the City to develop a TMD Management Plan pursuant to San Diego Municipal Code section 61.2507; and

WHEREAS, the lodging industry has additionally gathered written petitions signed by business owners who represent entities expected to pay more than fifty (50) percent of the assessments in the proposed district, thus signaling the requisite support pursuant to San Diego

Municipal Code section 61.2506(a) for the initiation of the proceedings to form a district. NOW,
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council does hereby approve the Tourism Marketing District (TMD) Management Plan, dated September 2007, attached hereto as Exhibit "A", and on file with the Office of the City Clerk as file number RR - 303077 ;

BE IT FURTHER RESOLVED, that the Council does hereby declare its intent to establish a Tourism Marketing District and its intent to levy and collect assessments, for a period of five (5) years, pursuant to the procedures included in San Diego Municipal Code section 61.2501 *et. seq.*, the San Diego Tourism Marketing District Procedural Ordinance.

BE IT FURTHER RESOLVED, that the Council does hereby declare its intent that specific issues as identified by the Independent Budget Analyst (IBA) in IBA Report Number 07-95 be addressed in any contract with a non-profit tourism marketing entity that is presented for consideration by the Council along with a resolution of establishment. Such issues shall include:

1. A statement that any annual marketing subsidy provided to the San Diego Convention Center Corporation is not contractually required but rather is requested on an annual basis;
2. A requirement that the tourism marketing non-profit annually provide the City a summary of expenditures for the prior fiscal year and actual or expected return on investment on expenditures;
3. A clarification of whether the City or the TMD non-profit will be responsible for covering any unforeseen and/or extraordinary expenses accrued by the City, in association with the TMD administration, including, but not limited to,

possible legal expenses, should such expenses exceed the City's TMD
Administrative Costs anticipated in the Management Plan;

4. A recitation of the manner in which interest and/or penalties are assessed against business owners failing to comply with TMD reporting timelines; the manner in which business owners may appeal the levying of interest or penalties; and clarification as to whether the City or the TMD non-profit would retain the proceeds from interest and penalties; and
5. A specific elaboration on the tourism marketing non-profit's commitment to fund certain longstanding Transient Occupancy Tax (TOT) recipients for the first 12 months of the TMD's operations and the longer-term commitment of funds to the San Diego Convention and Visitors Bureau and San Diego North Convention and Visitors Bureau;

BE IT FURTHER RESOLVED, that;

Section 1. PROPOSED ACTIVITIES

The proposed activities of the TMD consist in general of those items described in the TMD Management Plan, Exhibit "A" attached hereto. The activities will be funded through the San Diego Tourism Promotion Corporation with the intent to deliver measurable benefit and service levels throughout the TMD. The Corporation will serve as a funding conduit for the development and implementation of effective marketing programs and services that benefit the assessed businesses within the TMD.

Section 2. DURATION OF ASSESSMENTS; AMOUNT OF PROPOSED
ASSESSMENTS

The assessments for district activities will be levied for an initial period of five years, pursuant to San Diego Municipal Code [Code] section 61.2507(h), commencing on January 1, 2008, and terminating on December 31, 2012.

The proposed annual assessment amount is two (2) percent of gross room revenue for lodging businesses with seventy (70) or more sleeping rooms located within the district. Pursuant to the Management Plan, gross room revenue is defined as the “total consideration charged to a transient, as shown on the guest receipt for the occupancy of a room, or portion thereof, in a hotel.” Gross room revenue shall also include such incidental items of consideration as detailed in the definition of “rent” in Code section 35.0102. Gross room revenues will exclude those revenues derived from exempt activities as also detailed in San Diego Municipal Code 35.0111, the exemptions under the Transient Occupancy Tax. Transient occupancy taxes due shall not be included when calculating the assessment. Assessment amounts, if passed onto the transient, shall be specifically identified in any and all communications as a “San Diego Tourism Marketing District Assessment.”

Section 3. BONDS

Bonds will not be issued in connection with the establishment or continued operation of the San Diego Tourism Marketing District.

Section 4. BOUNDARIES OF PROPOSED DISTRICT

The boundaries of the proposed Tourism Management District shall be the entire corporate limits of the City of San Diego, as shown on a map included as Appendix A to the TMD Management Plan.

Section 5. ASSESSED BUSINESSES; TIME AND MANNER OF COLLECTION

Pursuant to the TMD Management Plan, assessments are proposed to be levied upon the owner(s), operator(s), or authorized representatives of lodging businesses with seventy (70) or more sleeping rooms located within the City of San Diego. Lodging businesses with fewer than seventy (70) sleeping rooms will not be assessed. A listing of those businesses subject to the initial TMD assessments as of October 2007 is attached as Appendix B to Exhibit A (The TMD Management Plan). As new lodging businesses begin operation, and as existing businesses with fewer than seventy (70) sleeping rooms expand, the number of assessed businesses will increase.

The collection of the assessments levied under the TMD shall be made at the time and in the manner that is set forth by the San Diego City Council in a forthcoming resolution of district establishment. Under the TMD Management Plan, it is proposed that assessments be remitted on a monthly basis to the City Treasurer, with businesses using a self-reporting form indicating the accounting period for the previous month, the applicable gross room revenue and the district assessment.

Section 6. NOTICE OF PROPOSED ASSESSMENTS; PROVISION OF BALLOT

Following the approval of this resolution, City staff shall provide the lodging business owners notice, by mail, of the proposed establishment of the TMD, the estimated total initial annual assessments for the entire district, and a specific formula with sufficient detail to allow the business owner to calculate the proposed assessment for individual lodging businesses. The notice shall include additional information as required in San Diego Municipal Code [Code] section 61.2508(c), and shall include a summary of the procedures for the completion, return and tabulation of ballots as required under Code section 61.2508(d).

Section 7. SETTING OF TIME AND DATE FOR PUBLIC MEETING

Pursuant to the requirement of California Government Code section 54954.6(a)(1) that, before any new assessments are adopted, the legislative body shall conduct at least one public

meeting at which local officials shall allow public testimony, City staff shall notice a public meeting regarding the proposed assessments. Said public meeting shall be held on Tuesday, November 20, 2007 at 10:00 a.m. in Council Chambers of the San Diego City Administration Building, 202 C Street, in the City of San Diego, California.

Section 8. TIME AND PLACE OF PUBLIC HEARING; CONSIDERATION OF PROTESTS; TABULATION OF BALLOTS AND ESTABLISHMENT OF DISTRICT

Pursuant to San Diego Municipal Code section 61.2508(e), a noticed public hearing shall be held on Monday, December 3, 2007 at 2:00 p.m. in the Council Chambers of the San Diego City Administration Building, 202 C Street, in the City of San Diego, California. This shall be noted as the date, hour and place for the hearing when any person interested may state support or opposition to the proposed levy of assessments, the proposed amount of the assessments, or the proposed activities of the TMD. If need be, the hearing may be continued from time to time, so long as all continuances are properly noticed. Failure of any person to make objections at the time of the hearing, or any continuance thereof, will be deemed to be a waiver of all objections and shall operate as a bar for any claim for damages. In order to be counted as official protests, they must be submitted in writing in the form of the official ballot and must contain a description of the business in which each signer thereof is interested, sufficient to identify the same. Any and all protests shall be delivered to and filed with the City Clerk at a time no later than the hour set for the hearing or continuance thereof.

At the public hearing, the Council shall consider all protests against the proposed TMD assessment and City staff shall tabulate the ballots. The Council shall not impose the assessment if there is a majority protest. Under San Diego Municipal Code section 61.2508(e), a majority protest exists if, upon conclusion of the hearing and tabulation of the ballots, those ballots

submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, based on a weighted vote.


Persons desiring to make inquiries regarding these proceedings are hereby advised that they may contact Meredith Dibden-Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

Section 9. NOTICE OF HEARING

City staff is directed to cause a notice of the hearing and the assessment ballots to be mailed at least forty-five (45) days before the date of the hearing, postage prepaid, to all proposed assessees, as determined by the City Treasurer pursuant to the criteria for assessed businesses as stated in Section 5 above. All such notices and balloting shall be performed in the manner and form provided for under the law.

BE IT FURTHER RESOLVED, that the Council does hereby declare that this activity is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Alex W. Sachs
Deputy City Attorney

AWS:mm
10/05/07
10/15/07 revised
Or.Dept:CPCI
R-2008-317 revised
MMS#5445

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 15 2007.

ELIZABETH S. MALAND
City Clerk

By *Mary Egan*
Deputy City Clerk

Approved: 11-5-07
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

01 OCT 2007