

ORDINANCE NUMBER O- 20693 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 18 2016

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, ONE MEASURE TITLED "THE CITIZENS' PLAN FOR THE RESPONSIBLE MANAGEMENT OF MAJOR TOURISM AND ENTERTAINMENT RESOURCES."

WHEREAS, on April 27, 2016, proponents timely filed with the San Diego City Clerk's Office an initiative petition titled, "The Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources" (the initiative measure), which seeks to, among other provisions, increase San Diego's hotel occupancy tax up to 5%; end the Tourism Marketing District; allow hoteliers to create assessment districts and use hotel occupancy taxes for a downtown convention center and not a stadium; prohibit on-site expansion of the existing convention center; create a downtown overlay zone for convention and sports facilities; create environmental processes; and allow Qualcomm stadium property's sale for educational and park uses; and

WHEREAS, the San Diego County Registrar of Voters conducted a legally required verification of the submitted petition signatures and found the initiative petition to contain the valid signatures of more than 10 percent of the City's registered voters, sufficient to qualify the measure for direct submission to the voters; and

WHEREAS, in compliance with San Diego Municipal Code (Municipal Code) sections 27.1026 and 27.1027, the City Clerk presented the petition and a certification of the sufficiency of its signatures to the City Council at its meeting on JUL 18, 2016; and

WHEREAS, in compliance with section 23 of the San Diego Charter and sections 27.1034 and 27.1035 of the Municipal Code, the City Council is required to either adopt the qualified initiative measure, or adopt a resolution of intention to submit the initiative measure to the voters at a special election, to be held at the same time as the next citywide election; and

WHEREAS, the initiative measure includes provisions that would increase the City's Transient Occupancy Tax; and

WHEREAS, under the California Constitution, the legislative body does not have authority to adopt the initiative measure because it includes a tax increase and instead must submit it to the voters for consideration; and

WHEREAS, the California Constitution directs that a general tax increase requires the approval of a majority of the City's voters, while a special tax increase requires two-thirds voter approval by qualified electors for passage; and

WHEREAS, now that the measure has been certified for placement on the ballot, the Council's action to submit the qualified initiative measure to the voters is a ministerial act within the Council's purview, is related to elections, and therefore is not an action subject to mayoral veto and will take effect upon passage by the Council, under Charter sections 275(c), 280(a)(1), 295(b) and 295(d); and

WHEREAS, by Ordinance No. O-20671, introduced and adopted on July 11, 2016, the City Council called a Municipal Special Election to be consolidated with the California State General Election on November 8, 2016, for the purpose of submitting to the qualified voters of the City one or more ballot measures; and

WHEREAS, the City Council now desires to submit the initiative ballot measure referenced in this Ordinance to the voters at the Municipal Special Election on November 8, 2016; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one initiative measure, titled “The Citizens’ Plan for the Responsible Management of Major Tourism and Entertainment Resources,” is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 8, 2016, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

MEASURE

(The complete text of the measure is attached to this Ordinance as Exhibit A, Pages 1 through 77, and is incorporated here by reference, and will be provided to the San Diego County Registrar of Voters in a separate document.)

END OF MEASURE

Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

MEASURE __. TAX AND FACILITIES INITIATIVE. Should the measure be adopted to: among other provisions, increase San Diego’s hotel occupancy tax up to 5%; end Tourism Marketing District; allow hoteliers to create assessment districts and use hotel occupancy taxes for a downtown convention center and not a stadium; prohibit on-site expansion of existing convention center; create downtown overlay zone for convention and sports facilities; create environmental processes; and allow Qualcomm stadium property’s sale for educational and park uses?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. On or before the statutory deadline of August 12, 2016, the City Clerk will provide the San Diego County Registrar of Voters with ballot pamphlet language regarding the percentage of votes required for passage of this measure by qualified electors voting on the matter at the Municipal Special Election; related law is currently under review by the California Supreme Court.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

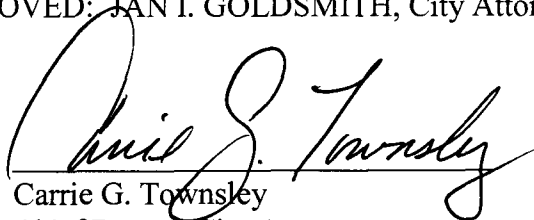
Section 8. A full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 9. This ordinance placing a qualified initiative measure on the ballot is a ministerial act within the Council’s purview and related to elections, and thus not subject to

mayoral veto under Charter section 280(a)(1); as such, it may be passed by the City Council on the date of introduction pursuant to Charter sections 275(c), 295(b), and 295(d).

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Carrie G. Townsley
Chief Deputy City Attorney

SBS:CGT:jdf
07/12/2016
Or.Dept:City Clerk
Doc. No.: 1322313_2

Exhibit A

RECEIVED
CITY CLERK'S OFFICE

NOTICE OF INTENT TO CIRCULATE PETITION
NOV 5 AM 9:52

Notice is hereby given of the intention of the person whose name appears hereon to circulate a petition within the City of San Diego for the purpose of requiring the responsible management of the City's major tourism- and entertainment-related facilities and infrastructure benefiting from and impacting the City's most valuable resource: the connection of tourists and residents to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries.

**THE CITIZENS' PLAN FOR THE RESPONSIBLE MANAGEMENT
OF MAJOR TOURISM AND ENTERTAINMENT RESOURCES**

Be it ordained by the People of the City of San Diego:

Part 1. Title.

This Ordinance shall be known and may be cited as the Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources (the "Ordinance").

Part 2. Findings and Declarations.

The People of the City of San Diego hereby find and declare all of the following:

- (a) The City of San Diego's most valuable resource for both tourists and residents is the City's connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, which are supported by major tourism- and entertainment-related facilities and infrastructure that benefit from and impact this resource. This Ordinance is necessary to ensure that the benefits of this resource can be accessed and enjoyed by tourists and residents alike in the near and distant future, and to establish transparent financing mechanisms that support each of them paying their fair share for the facilities and infrastructure that benefit from and impact this resource.
- (b) The public's right to vote – especially on the City's levying of new taxes, incurring of new debt, and selling and administering of large parcels of public land – is a basic legal requirement embodied in the California Constitution and the San Diego City Charter, and must not be violated under any circumstance.
- (c) Tourism is one of the City's top industries and is responsible for a substantial portion of the City's revenues in the form of the Transient Occupancy Tax ("TOT"), which is used to pay for a variety of general governmental services such as street and sidewalk maintenance, parks, fire stations, environmental protection, and public safety that benefit tourists

and residents alike. The San Diego Municipal Code currently sets the TOT rate at 10.5%

- (d) The City's 10.5% TOT rate is not competitive. By comparison, it has been reported that in 2014 Seattle's lodging tax rate was 16.5%, San Francisco's lodging tax rate was 16.25%, Los Angeles' lodging tax rate was 15.5%, and Anaheim's lodging tax rate was 17%. The City therefore could eliminate the 0.55-2% "self-assessment" that currently may be passed on to hotel guests in connection with the San Diego Tourism Marketing District and raise its overall TOT rate to 15.5%, thereby increasing the amount of money paid by tourists in support of their fair share of general governmental services, while still maintaining a highly competitive tax rate. Moreover, by having a slightly lower rate for tourists who stay at smaller accommodations, the City will also have an even greater competitive advantage while also having needed general revenues to support general governmental services.
- (e) City officials have done too little to ensure that tourists and the businesses benefitting from tourism pay their fair share of the costs to develop, maintain and enhance existing and new tourism- and entertainment-related facilities and infrastructure in an economically sustainable and environmentally responsible manner. It has been reported that Qualcomm Stadium may require \$75 million or more in deferred maintenance and the San Diego Convention Center may require \$30 million to \$40 million in deferred maintenance. There has also been a lack of transparency, accountability, and efficiency in the City's planning, financing, managing, and sales and marketing process for such facilities and infrastructure, which has contributed to many of the City's problems such as funding shortfalls and failed measures to expand the Convention Center. The adoption of this Ordinance would serve in part to ensure that the City's facilities and infrastructure are responsibly managed and would establish concrete, transparent, and voter-approved mechanisms and incentives for the tourism industry to support its fair share of the costs required to properly maintain and enhance existing facilities and infrastructure and to develop new facilities and infrastructure.
- (f) The City's tourism industry has enjoyed many of the benefits of the availability of public resources such as Qualcomm Stadium, the San Diego Convention Center, and the facilities and infrastructure that serve them, without having to bear a commensurate share of the burden of providing and maintaining such infrastructure and facilities. These resources have, for many years, experienced growing operational deficits and deferred-maintenance debts. Only a coordinated and consolidated governance structure can provide the efficiencies necessary to relieve the

public of this burden. The adoption of this Ordinance would serve in part to give the hotel industry incentives to assume their fair share of providing the highest quality tourism- and entertainment-related facilities and infrastructure.

- (g) Responsibly managing the City's tourism- and entertainment-related facilities and infrastructure in a manner that preserves and enhances access for tourists and residents to the City's most valuable resource – its unique connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries – requires restoring and protecting this resource, appropriately allocating low-density and high-density development impacting this resource, and supporting compatible uses adjacent to or near this resource that together maximize tourism and public benefits. The adoption of this Ordinance would serve in part to provide voter-approved incentives for meeting the foregoing need, including, but not limited to, incentives to concentrate intensive and high-density development outside of the Qualcomm Stadium site and away from the Downtown San Diego Waterfront.
- (h) The Qualcomm Stadium site and the City's downtown have long been linked, in part because of the ongoing discussion about the location of a potential new home stadium for the San Diego Chargers. This link is as natural as the connection tourists and residents have to the Pacific Ocean and its waterways. The existing Qualcomm Stadium site and the downtown area in and around the "East Village" community are among the few remaining areas within the City that would support the development of future major tourism- and entertainment-related facilities, and would benefit from significant facilities and infrastructure such as existing hotels, public-access, and public-transportation systems. These factors, and others, also provide the necessary tools to prudently finance any future major tourism- and entertainment-related facilities. As such, the adoption of this Ordinance would not prevent the City from pursuing the development of a new home stadium for the Chargers or another National Football League ("NFL") franchise either at the existing Qualcomm Stadium site or in an area of downtown that is off the Downtown San Diego Waterfront. Moreover, in furtherance of its stated objective, and if the Chargers and the City determine not to maintain the existing Qualcomm Stadium site for the home stadium of the Chargers or if another NFL team does not make the site its home stadium, this Ordinance would authorize the City to sell the approximately 166-acre site for its fair-market value and subject to the condition that it be developed for the combined activities and uses of environmental preservation, education, eco-tourism, recreation, and other compatible uses that together maximize the tourism and public benefits of and access to this land with such high ecological value.

- (i) For all of the foregoing reasons, as well as those expressed in the other provisions of this Ordinance, the reforms contained herein are necessary to properly and adequately enhance, preserve, and manage the City's major tourism- and entertainment-related resources in a manner that best protects the unique and valuable connection between tourists and residents and the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries. To this end, the reforms reflect the public's desire to see substantial improvements in the City's overall management of its tourism- and entertainment-related resources through a comprehensive, integrated, economically sustainable, environmentally responsible, and lawful plan for enhancing, preserving, and responsibly managing all of these resources. All of the components of this Ordinance have a direct relationship and are essential to each other in order to effectuate the public's purposes and intent.

Part 3. Purposes and Intent.

The People of the City of San Diego hereby declare the following purposes and intent in enacting this Ordinance:

- (a) Setting the City's Transient Occupancy Tax at a competitive rate compared to other cities: 15.5% for large hotels and 14% for small hotels.
- (b) Repealing an existing 4% earmark on Transient Occupancy Tax that is used for promoting the City as a tourism destination, repealing the San Diego Tourism Marketing District Procedural Ordinance and its 0.55-2% surcharge on hotel guests as a redundant program for promoting the City, and replacing them with two voluntary programs that encourage hoteliers to self-assess as follows:
 - (1) By creating one self-assessment designed to pay for promoting the City, and another self-assessment designed to finance an off-waterfront expansion of the San Diego Convention Center; and
 - (2) By giving hoteliers the option of taking a credit of up to 2% from their Transient Occupancy Tax remittances for their promotional self-assessment and another credit of up to 2% from their remittances for their expansion self-assessment, for a maximum credit of 4%, as an incentive to hoteliers in exchange for their assumption of the responsibility for promoting the City and expanding the Convention Center.
- (c) Reaffirming the prohibition against an expansion of the San Diego Convention Center on the Downtown San Diego Waterfront, allowing an

off-waterfront expansion of the Convention Center, and thereafter allowing for, but not requiring, private management of the Convention Center subject to the assumption of liabilities (including deferred maintenance) by such private management as specified below.

- (d) Allowing for, but not requiring, the sale of the approximately 166-acre Qualcomm Stadium site, subject to the site thereafter being used for the compatible low-impact purposes of environmental preservation, university education, eco-tourism, recreation, and other compatible uses that together maximize the tourism and public benefits of and access to land with such high ecological value; and encouraging higher-density development to be directed downtown, consistent with existing facilities and infrastructure and the community plan.
- (e) Allowing for retention of the San Diego Chargers in Mission Valley or downtown without taxpayer funding, consistent with the protection of the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, as applicable, with public financing requiring a separate vote of the people.

Part 4. The Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources shall be codified by adding and revising provisions to the San Diego Municipal Code as follows:

A. The following sections are to be added to, and inserted in numerical order into the existing provisions of, Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, Transient Occupancy Tax.

§35.0109 Establishment of Fair, Competitive Tourist Tax Rates

- (a) This section increases the City's Transient Occupancy Tax rate to enable the City to keep its competitive advantage over other major tourism destinations while at the same time generating additional general revenues to, by way of example and not limitation, support general government services, facilities and infrastructure, and the protection of the environment that make the City one of the nation's top tourism destinations.
- (b) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of Occupancy in any Hotel with at least 30 rooms available for Occupancy, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of 5%.
- (c) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of

Occupancy in any Hotel with less than 30 rooms available for Occupancy, each Transient is subject to and shall pay an additional tax in the amount of 3.5%.

- (d) All revenues collected pursuant to the taxes imposed by the City under this section shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance. To this end, the tax imposed under this section is intended to be and shall be a general tax and not a special tax.

§35.0121.5 Review of Records by City Auditor

To ensure that the City is collecting and accurately reporting and accounting for all Transient Occupancy Tax amounts that are due, the City Auditor shall have the same right as the City Treasurer to inspect records and apply audit procedures under Section 35.0121. It shall be unlawful for any person to refuse to allow or permit such audit to be conducted by the City Auditor after a lawful demand therefor by the City Auditor, even when the City Treasurer has not joined in or made the demand.

§35.0139 Sunset Provisions for Section 35.0128(a)

- (a) Section 35.0128(a) shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by Section 35.0128(a) shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, the limitation on the use of Transient Occupancy Tax imposed by Section 35.0128(a) shall have no force or effect after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.
- (b) The sunset provisions contained in sub-section (a) of this section have no force or effect on Section 35.0128(b)-(c) or on the imposition or continuation of a tax pursuant to Section 35.0103. Sections 35.0103 and 35.0128(b)-(c) remain in full force and effect.
- (c) Nothing in this section is intended to eliminate or reduce any activity, program, or project previously funded from Transient Occupancy Tax revenues subject to Section 35.0128(a), including but not limited to arts and culture, capital improvements, economic development, safety and maintenance of visitor-related facilities, and major events.

B. The following section is to be added to, and inserted in numerical order into the existing provisions of, Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, the San Diego Tourism Marketing District Procedural Ordinance.

§61.2528 Sunset Provisions for San Diego Tourism Marketing District Procedural Ordinance

This Division and each of its sections shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by this Division or any of its sections shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, no *assessment* may be imposed or collected pursuant to this Division after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.

C. The following sections are to be added as Division 28 of Article 1 of Chapter 6 of the San Diego Municipal Code, Tourism- and Entertainment-Related Facilities and Infrastructure Protection and Improvement.

§61.2801 Tourism- and Entertainment-Related Facilities and Infrastructure Protection and Improvement

- (a) The purpose of this Division is to authorize structures, facilities, infrastructure, and land uses and to establish regulations that will broadly and collectively promote economically and environmentally sustainable tourism, in a responsible manner that minimizes the financial risk and maximizes the financial benefits for the City. The purpose of this Division is also to serve the needs of tourists and residents alike, as part of a set of related reforms to the City's overall management of its major tourism- and entertainment-related facilities and infrastructure (the other reforms being codified elsewhere in this Municipal Code). By way of example and not limitation, this Division will achieve its purposes by:
- (1) Facilitating the creation, preservation, and enhancement of access to park and open space in Mission Valley and along the Downtown San Diego Waterfront by limiting the City's ability to grant subsidies, while simultaneously creating incentives for public-private partnerships that benefit taxpayers, residents, and tourists.
 - (2) Promoting efficiencies in the City's tourism planning, management, and sales and marketing, and ensuring that the City's priorities for the financing and administration of major tourism- and

entertainment-related facilities and infrastructure align with the City's needs and financing capabilities.

- (3) Updating and harmonizing existing provisions of the Municipal Code that contribute to poor planning, management, and sales and marketing of major tourism- and entertainment-related facilities and infrastructure and impair the City's ability to achieve its tourism goals in a way that improves performance and economic benefits for taxpayers.

§61.2802 Creation of Tourism-Financed Improvement Districts; Incorporation and Modification of Property and Business Improvement District Law of 1994

- (a) The purpose of this section is to allow for the creation of tourism-financed improvement districts that will serve the needs of tourists and residents alike.
- (b) The Property and Business Improvement District Law of 1994 ("PBID Law") is hereby incorporated into this Division by reference but shall be subject to all of the modifications and limitations provided in this section, which shall themselves be construed liberally to achieve the purposes of this Division, and shall be further subject to any and all other applicable legal requirements.
- (c) With respect to membership on the governing body of the district, for each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:
 - (1) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.
 - (2) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.
 - (3) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.
 - (4) The member is recommended by the Mayor and approved by the City Council.
- (d) For each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:

- (1) The member is a member of a labor union for at least one year prior to appointment to the governing body.
 - (2) The member is recommended by the Mayor and approved by the City Council.
- (e) Each owners' association shall be considered a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose, except as follows:
- (1) Each owners' association shall be considered a public entity for purposes of satisfying any mitigation measures that may be required of a district, the owners' association, or both pursuant to Section 61.2804(c)-(d).
 - (2) The board members and staff shall be considered public officials for purposes of California Government Code Section 1090. However, no board member or staff is financially interested in any contract made by him or her if the contract provides no greater material benefit to the board member or staff than it provides to any assessee in the district.
 - (3) Each owners' association shall be subject to and comply with any and all laws specified in California Streets and Highways Code Section 36612.
- (f) Not more than 90 days after the end of each such district's fiscal year, the owners' association shall file audited financial statements for the ended year with the City Clerk. The audited financial statements shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that no expenditure during the ended year was made for any purpose not explicitly authorized by the management district plan and the annual report approved by the City Council for the ended year. The City shall not release any assessments collected for the district more than 90 days after the ended year unless and until the audited financial statements and certification required by this sub-section are filed with the City Clerk. The audited financial statements and certification shall be open for inspection and copying by the public.
- (g) No portion of the assessments collected for any such district may be used to pay for or otherwise provide any form of "activities" as that term is used in

the PBID Law, including but not limited to any sales and marketing or promotion.

- (h) No portion of the assessments levied or collected for any such district may be used to pay for or otherwise provide any form of acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use in the coastal zone under either of the following circumstances:
 - (1) The structure, facility, infrastructure, or use in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center, or any activities undertaken there, beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego on October 9, 2013; or
 - (2) The purpose of the structure, facility, infrastructure, or use is to provide convention, exhibition, meeting, or banquet opportunities like those provided at the Convention Center.

- (i) For each such district, the owners' association shall at all times maintain an Internet Web site and promptly and conspicuously publish there all of the following documents and other information:
 - (1) The agendas of the governing body and any committees thereof, as if the owners' association were a "local agency" and the governing body and each committee were a "legislative body" as those terms are used in California Government Code Section 54954.2(d) (including its sub-parts). The published agendas shall include any and all back-up materials distributed to one or more members of the governing body or committee in connection with the meeting.
 - (2) The minutes of each meeting of the governing body and any committees thereof. The minutes shall include a copy of any and all materials submitted to the body or committee in connection with the meeting, except for any records that were distributed exclusively during an authorized closed-session meeting of the governing body or that are exempt from disclosure under the California Public Records Act.
 - (3) A file-stamped copy of the audited financial statements and certification required under sub-section (f) of this section.

- (4) Any and all state and federal tax returns.
- (5) Each management district plan as defined in the PBID Law.
- (6) Each fiscal year's report as described in the PBID Law.
- (7) For each fiscal year, the names, mailing addresses, phone number, e-mail address, and officer title (if any) for each member of the governing body of the owners' association and for any executive director or other officer or committee member who is not a member of the governing body.
- (8) Any and all resolutions or ordinances of the City Council pertaining to the district.
- (9) Any and all contracts (including any amendments thereto or other modifications thereof) between the City and the owners' association.

The maintenance of the Internet Web site for the purpose of providing public access to the foregoing documents and other information shall not constitute sales and marketing or promotion prohibited under sub-section (e) of this section.

- (j) None of the improvements financed by such a district may include any portion of the acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of an entertainment or professional sports facility. If the improvements financed by a district consist of any convention center, exhibition, and meeting facilities described in Section 61.2804(b)(1) and are combined with any entertainment or professional sports facility, the incremental costs of acquisition, development, design, entitlement, construction, operation, and maintenance exclusively attributable to the portion of the combined facility added for entertainment- or professional sports-facility purposes shall be paid from sources other than district assessments or any proceeds from bonds issued by the district.
- (k) Each of the property and business owners submitting the written petition for the creation of such a district shall be the holder of a valid Transient Occupancy Registration Certificate within the district.
- (l) "Improvement" as defined in the PBID Law may also include transportation infrastructure that allows tourists to move between frequently visited destinations in the San Diego region (e.g., streetcar lines between Balboa

Park and Downtown, an airport intermodal transit center, and light-rail extensions), as well as maintenance, repairs, restoration, or remodeling of tourist-related facilities within the district's physical footprint.

- (m) The City's total annual administrative fee and other charges imposed on any such district and owners' association may not exceed 0.25% of the district assessments remitted to the City. This limitation may be increased each year based on any adjustment of the "Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items" on the first day of the fiscal year for which the charges are to be imposed.
- (n) The fiscal year of such district and of the owners' association shall at all times be the same as the City's fiscal year.
- (o) Nothing in this section imposes any limitations on such district's ability to increase assessments in order to secure adequate coverage for any debt it may incur. This includes but is not limited to assessments for funds used to make payments of premiums and other costs, fees, and expenses of an insurance policy or policies, for funds used to fund a cash, investment, or other reserve or maintenance account or accounts that are secured for the benefit of financing parties and for the payment of costs, fees, and expenses in connection therewith, for funds used to make payments in respect of such other instrument or instruments as may be agreed with the financing parties, or any combination thereof, in each case for the purpose of satisfying any such coverage requirement.
- (p) Beginning in such district's sixth fiscal year and continuing each fiscal year thereafter, the owners' association shall provide an annual written accounting of the amount of assessments received by the district over the preceding five fiscal years and the amount of such receipts that have accumulated without being spent, encumbered, or set aside during that five-year period for a future expenditure on one or more improvements authorized by the management district plan. The accounting shall be filed with the City Clerk not more than 90 days after the end of the district's fiscal year. The accounting shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that the information contained in the accounting is true and correct. The City shall not release any assessments collected for the district more than 90 days after the ended year corresponding to the accounting unless and until the accounting and certification required by this sub-section are filed with the City Clerk. The accounting and certification shall be open for inspection and copying by the public.

- (q) Not more than 30 days after the accounting and certification described in sub-section (p) of this section is filed with the City Clerk, the owners' association shall remit to the City any and all receipts described in sub-section (p) that have not been spent, encumbered, or set aside for a future expenditure authorized by the management district plan up to the total of all deductions that may have been taken from Transient Occupancy Tax remittances by one or more Operators under Section 61.2807(b) or (c). This remittance constitutes the reimbursement of unused incentives taken by Operators to undertake the improvements in the management district plan; it does not constitute a forfeiture, penalty, or any other loss of a vested right because the incentives would not have been authorized in the absence of a reasonable expectation that they would in fact be used for the purposes specified in the plan.
 - (r) No portion of any of the assessments collected by such district may be used for any political purpose, including but not limited to supporting or opposing any initiative, referendum, or other ballot measure, or supporting or opposing any candidate for elective or other public office.
 - (s) There shall be no limit on the number of such districts that may be created under this section. If any such districts are created:
 - (1) The first district shall be known as the "Downtown Tourism-Financed Infrastructure District." Its geographic area shall encompass the entirety of the 92101 and 92134 ZIP codes, as well as that portion of the 92113 ZIP code lying north of the Coronado Bridge and west of Interstate 5.
 - (2) The second district shall be known as the "Suburban Tourism-Financed Infrastructure District." Its geographic area shall encompass the entirety of the City except that portion encompassed by the Downtown Tourism-Financed Infrastructure District.
 - (3) More than one district may be created simultaneously.
- The specification of the name and geographic area of any district is not intended to constitute the levy of any fee, charge, or other tax or assessment.
- (t) Any such district shall be entitled to borrow or loan money on commercially reasonable terms.

- (u) Nothing in this section is intended to require any expenditure of City funds for any particular purpose, including but not limited to any tourism-, convention-, or sports-related facility.

§61.2803 Approval of Tourism-Financed Improvement Districts

Except to the extent otherwise prohibited or required law:

- (a) The City Council shall ministerially approve the formation of any tourism-financed improvement district that meets the requirements of Section 61.2802, including any interim actions leading up to a final approval.
- (b) Final approval shall occur not more than 30 days after all legal prerequisites to final approval have been satisfied.
- (c) No interim action shall occur more than 30 days after all legal prerequisites for the interim action have been satisfied.
- (d) If the City Council fails to give any final approval or take any interim action within the time limits specified in this section, the matter shall be deemed approved or taken, as the case may be, by operation of law and without the need for further approval or action by the City Council.

§61.2804 Creation of Downtown Convention and Entertainment Overlay Zone

- (a) The Downtown Convention and Entertainment Overlay Zone ("Overlay Zone") is hereby created and made applicable to all parcels of real property lying north of Imperial Avenue, west of 17th Street, south of K Street, and east of Park Boulevard in the City of San Diego.
- (b) In addition to any other structures, facilities, infrastructure, or uses authorized by the Municipal Code and applicable land-use plans, and in accordance with all other applicable legal requirements, the structures, facilities, infrastructure, and uses authorized within the Overlay Zone shall include the following:
 - (1) Convention center, exhibition, and meeting facilities;
 - (2) Professional, semi-professional, collegiate, or recreational sports facilities; or

- (3) Any structures, facilities, or infrastructure that provide for one or more authorized uses, including a single structure or facility that combines one or more authorized uses.
- (c) Each and every project involving one or more structures, facilities, infrastructure, or uses authorized by this section shall comply with any and all mitigation, monitoring, and reporting requirements that would be required under the California Environmental Quality Act in the same manner and to the same extent as a project that is not exempt from environmental review under the Act. The mitigation measures shall include, at a minimum, all of the following:
- (1) Construction that satisfies the Leadership in Environmental and Energy Design (LEED) silver standard as of the effective date of this section, or the standard's equivalent if approved by the U.S. Green Building Council, and a plan to reduce vehicle miles traveled to the project that includes incentives for the use of public transit.
 - (2) Compliance with all applicable federal, state, and local rules and regulations governing historical resources.
 - (3) The proponent or proponents of any project authorized by this section shall make to the San Diego Unified Port District a one-time payment of \$15 million no later than one year after the issuance of any certificate of occupancy for the project, in exchange for the Port District's binding legal commitment to match that payment with \$35 million over a 30-year period. At least 90% of the total \$50 million in funds shall be used exclusively for the development, design, entitlement, and construction of public park and recreational facilities to be included in Phase 2 of the Port District's North Embarcadero Visionary Plan, and up to 10% of the total funds shall be used exclusively to enhance public access and activate public uses along the Downtown San Diego Waterfront adjacent to the San Diego Convention Center. The funds may not be used for any purpose not expressly authorized by this paragraph, and in particular may not be used to satisfy any of the Port District's obligations under Section 1 of that certain Memorandum of Understanding commonly known as Port District Document No. 57019 filed in the Office of the District Clerk on November 15, 2010, except that up to one-half of the proceeds may be used to acquire the real property described in Section 1(C) of the Memorandum of Understanding.
 - (4) The creation of a reserve fund sufficient to enable one public-agency recipient under Section 61.2806 to incur bonded

indebtedness or other debt generating \$5 million in principal proceeds based on a repayment period of not more than 30 years to be used exclusively by the recipient for the development, design, entitlement, and construction of the Urban Rivers Scientific Interpretive Center specified in Section 61.2806(a)(1)(i). After such debt is incurred, at the beginning of each of its fiscal years, the public-agency recipient shall be entitled to an advance from the reserve fund in an amount equal to the recipient's actual out-of-pocket debt service for that fiscal year. The public-agency recipient's request for an advance shall be made in writing and certify under penalty of perjury that the advance will be applied only toward the debt service. The proceeds from the debt may not be used for any purpose not expressly authorized by this paragraph. Upon the full payment and discharge of the debt, including all principal and interest thereon, any funds remaining in such reserve fund shall be promptly paid to the public-agency recipient, to be used solely for the purposes prescribed in this paragraph.

Each of the measures required by this sub-section (c) is necessary to mitigate the potentially significant impacts of the projects contemplated by this section. However, the mitigation measure required by sub-section (c)(4) of this section serves to mitigate some of the potentially significant impacts of these projects as well as some of the potentially significant impacts of the activities contemplated by Section 61.2806(a)(1)(iv), which are themselves the result of moving development intensities between Mission Valley and Downtown San Diego in order to maximize economic benefits while minimizing environmental harm.

- (d) The mitigation required by sub-section (c) of this section shall be completed, or if not capable of being completed for non-financial reasons shall at least be legally enforceable by any member of the public, no later than the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(1)-(2), and no later than one year after the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(3)-(4). Except as otherwise required by sub-section (c), any project described in sub-sections (b)(1)-(3) of this section shall be exempt from the California Environmental Quality Act.
- (e) The City shall provide the public with an opportunity to review and comment on any proposed mitigation, monitoring, and reporting requirements under sub-sections (c) and (d) of this section and shall adopt the requirements at a public hearing noticed in accordance with the Land Development Code's requirements for Process Five decisions.

- (f) Nothing in this Division affects any vested rights in existence when this section takes effect. Minor modifications to any such vested rights may be processed ministerially, or otherwise in accordance with Process One of the Land Development Code.
- (g) Nothing in this section is intended to diminish the parking rights acquired by the San Diego Padres with respect to Tailgate Park.

§61.2805 Protection of Open Space, Public Access, and Other Tourism-Related and -Frequented Facilities on Downtown San Diego Waterfront

- (a) The City shall not, seek the approval of, operate, lease, own, loan money to or for, financially support, or otherwise directly or indirectly participate, whether through a joint powers authority or otherwise, in any form of acquisition, development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use in the coastal zone that in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego immediately prior to the California Coastal Commission's approval of San Diego Unified Port District's Port Master Plan Amendment No. 6-PSD-MAJ-45-13 (Port District Master Plan Amendment no. 45) on October 10, 2013.
- (b) Nothing in sub-section (a) of this section is intended to apply to any structure, facility, infrastructure, or use in the coastal zone that is not contiguous to the San Diego Convention Center as described in sub-section (a) or that is not authorized by the Port Master Plan Amendment identified in sub-section (a); or intended to apply to the City's liability for deferred maintenance of the existing Convention Center as of the effective date of this section.
- (c) Nothing in this Division prevents the City from seeking the qualified electors' approval of a future expansion of the San Diego Convention Center in the coastal zone.
- (d) The City may refinance any bonded indebtedness it has incurred in connection with the San Diego Convention Center in order to obtain a lower interest rate or other savings entirely applied to pay down the principal amount of the indebtedness. In refinancing, however, the City may not extend the term of any existing bonded indebtedness.

§61.2806 Protection and Enhancement of Mission Valley Options for Shared Visitor and Resident Use Including Eco-Tourism, Higher Education, Environmental Science, and Professional and Collegiate Sports

- (a) As home to the primary stadium of the San Diego Chargers, Qualcomm Stadium in Mission Valley is both a source of civic pride and an attraction to tourists. The approximately 166-acre site also has high ecological value in a high-density area of the City that includes numerous existing hotels and other hospitality infrastructure (including public transportation) in close proximity to the site. As a result, the site provides the City and the public with the opportunity to allow for future development that combines environmental preservation, education, eco-tourism, recreation, and other compatible public uses that together maximize the tourism and public benefit of and access to this land. In furtherance of the foregoing, if at any time the Qualcomm Stadium site ceases to serve as the location of the home stadium for the Chargers or another National Football League franchise, then the City is authorized to sell the approximately 166-acre site directly, or indirectly through structured conduit transactions, to San Diego State University, the University of California at San Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies (collectively, "Qualified Recipient"), subject to all of the following conditions, limitations, and procedures:
- (1) The instruments for the final transfer of possession, ownership, or use of the site to the Qualified Recipient shall include such use restrictions and covenants running with the land, for the benefit of the City, that are necessary to ensure that all requirements of this section are satisfied. The transfer instruments, including all required restrictions and covenants, shall be made available for public inspection at least 30 days prior to their execution by the City. At a minimum, the restrictions and covenants shall ensure the following:
- (i) The portion of the site (approximately 28 acres) proximate to the San Diego River and bordered generally on the north by the elevated trolley line shall be reserved exclusively in perpetuity for restoration of that segment of the River in accordance with the San Diego River Conservancy's Strategic Plan Update 2012-2017 and other planning documents applicable to the Conservancy. A portion of the site in reasonable proximity to the existing trolley station on the site shall also be reserved exclusively and in perpetuity for and developed as an Urban Rivers Scientific Interpretive Center, to be operated by the Qualified Recipient as a center

for eco-tourism, teaching, public education, and scientific research, including the monitoring of the River from its source to the Pacific Ocean. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership.

- (ii) Separate from and in addition to the portion of the site reserved in sub-section (a)(1)(i) of this section, at least 22 acres of the site shall be reserved exclusively in perpetuity for and developed and maintained as active recreational space, to be designated for shared use by all members of the public, including tourists, and not merely university-affiliated persons. This portion of the site shall be located in reasonably close proximity to the existing trolley station in order to encourage the use of public transit. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. The site's planners and designers shall use their best efforts to maximize shared-use recreational space. At least one-third of the portion of the site described in this paragraph shall be recreational use that is open to the public and not subject to reservation for organized university use.
- (iii) To the extent practicable, there shall be an 8- to 10-foot-wide continuous walking and biking path or trail incorporating the entire site. There shall be sufficient paths or trails connecting the portions of the site described in sub-section (a)(1)(i) of this section to the portions of the site described in sub-section (a)(1)(ii) of this section to ensure active use of both portions. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. That portion of the path and trail passing through the area described in sub-section (a)(1)(ii) of this section may be counted toward satisfying the size requirement of that area.
- (iv) The portion of the site not covered by sub-sections (a)(1)(i)-(iii) of this section shall be reserved exclusively and

in perpetuity for and developed as university-related facilities to support university uses and activities (e.g., hospitality education or environmental research), including but not limited to student and faculty housing, classroom and administrative buildings, campus-serving commercial buildings, research and development facilities, and intramural and interscholastic sports facilities, such as a stadium for football, soccer, or both (not in excess 40,000 seats). Nothing in this paragraph precludes shared university and other public uses of any facility constructed on the site.

- (v) For purposes of the California Environmental Quality Act, the preservation, enhancement, and access measures described in sub-sections (a)(1)(i)-(iii) of this section shall be treated as components of any necessary mitigation for the impacts of the development described in sub-section (a)(1)(iv) of this section and Section 61.2804. In addition, the measures described in sub-sections (a)(1)(i)-(iii) and the limitations on the development described in sub-section (a)(1)(iv) are necessary to protect the Pacific Ocean from pollution and other harmful contaminants that are carried from the site to the San Diego River and then discharged into the Pacific Ocean.
- (2) The City may reserve for itself, through easements or as it otherwise deems necessary or appropriate, any and all rights and privileges necessary or convenient to the City in carrying out any of its municipal functions on or through the site, including but not limited to groundwater rights.
- (3) In order to prevent real-estate speculation, the total sale price of the site shall under no circumstances be lower than the fair-market value of the property as determined by any appraisal report submitted to the City between January 1, 2015 and August 1, 2015.
- (4) The Qualified Recipient of the property shall provide written confirmation to the City, prior to the transfer's completion, that the Qualified Recipient is ready, willing, and able to receive the property immediately upon the transfer's closing and subject to all other conditions imposed by this section. The deeds, covenants, and other instruments necessary to transfer possession, ownership, or use of the property from the City to the Qualified Recipient shall be recorded in the San Diego County Recorder's Office.

- (5) All development of the site shall be consistent, to the extent practicable, with the goal of creating a fully walkable, bikeable, transit-oriented site that serves members of the university community, tourists, and City residents alike. To the extent practicable, all structures on the site shall employ photovoltaic or next-generation renewable-energy technology in order to generate electricity for on-site use.
- (6) All financing for the development of the site under this sub-section (a) shall be the responsibility of the Qualified Recipient, and nothing in this section is intended to limit the financing mechanisms available to the Qualified Recipient. However, nothing in this section authorizes the City to expend any funds or other resources for any purpose, activity, or use authorized by this section except for the limited purpose of assisting in the achievement of the goal specified in sub-section (a)(5) of this section.
- (7) The City shall comply with all other laws applicable to the sale.
- (8) The sale and development of the site contemplated by this sub-section (a) shall not be exempt from the California Environmental Quality Act.
- (9) All proceeds received by the City from the sale contemplated by this sub-section (a) shall be allocated and deposited as required by law. It is the sense of the qualified electors, in enacting sub-section (a), that any and all proceeds that may be lawfully directed to the City's Infrastructure Improvement Fund should be used for the purposes of the Fund.
- (10) The conditions, limitations, and procedures prescribed throughout this sub-section (a) are intended to expedite the process of transferring possession, ownership, or use of the Qualcomm Stadium site to the Qualified Recipient for the purposes set forth in sub-section (a). Such purposes constitute bona fide governmental purposes under City Charter Section 221. Furthermore, to the extent that the sale or development authorized by this section constitutes a sale or exchange that requires ratification of the electors under Section 221, the enactment of this section is intended to constitute the requisite ratification.
- (11) As used in this sub-section (a), "Qualified Recipient" also includes San Diego State University, the University of California at San

Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies, any private party (including but not limited to for-profit and non-profit entities), or any combination of the foregoing that seeks to obtain the approximately 166-acre site for the purpose of obtaining the entitlements to carry out the design, development, financing, construction, operation, and maintenance of the site in accordance with the conditions, limitations, procedures, and other requirements and intended uses set forth in sub-section (a) and to subsequently provide for possession, ownership, use, or other control of all or portions of the site to one or more of the aforementioned public agencies as necessary to satisfy such requirements and intended uses; "San Diego State University" includes any and all of the SDSU auxiliary organizations and foundations, and the Trustees of the California State University acting for the benefit of SDSU; "University of California at San Diego" includes any and all of the UCSD auxiliary organizations and foundations, and the Regents of the University of California acting for the benefit of UCSD; "San Diego Community College" includes any and all community colleges located in the City of San Diego and each college's board of trustees acting for the college's benefit; and "San Diego Chargers" and "Chargers" include any successor in interest.

- (b) Except as provided in sub-section (c) of this section, nothing in this Division is intended (i) to affect the project that is within the scope of that certain Draft Environmental Impact Report for the Qualcomm Stadium Reconstruction Project (City of San Diego Project No. 437916; State Clearinghouse No. 2015061061); (ii) to exempt the project that is the subject of the Draft Environmental Impact Report from the California Environmental Quality Act; (iii) as a vote of the qualified electors to authorize or endorse any expenditure of public funds for the project that is the subject of the Draft Environmental Impact Report or to otherwise affect the spending authority of the City with regard to such an expenditure; or (iv) as a vote of the qualified electors to authorize or endorse any sale or other disposition of the Qualcomm Stadium site other than what is described in sub-section (a) of this section.

- (c) Because of the extraordinary environmental benefits of protecting the San Diego River as a tributary to the Pacific Ocean, enhancing public access to the River, creating recreational and environmental opportunities for tourists and residents along the River, improving water quality, and creating important open space in Mission Valley, and because Qualcomm Stadium has operated in Mission Valley for decades and the operation of a new

stadium would have fewer adverse environmental impacts than the existing stadium, the project described in that certain Draft Environmental Impact Report identified in sub-section (b) of this section shall be exempt from the California Environmental Quality Act if all of the following conditions are satisfied:

- (1) The City Council certifies a final version of the Draft Environmental Impact Report, and no aspect of the scope of the project under the final certified version in any way exceeds the scope of the project as described in the Draft Environmental Impact Report, including but not limited to the project's size, facilities, and use.
- (2) The final certified version of the Draft Environmental Impact Report contains at least the same mitigation measures that are specified in the Draft Environmental Impact Report and a requirement that all development of the site be consistent with ensuring adequate and appropriately managed riparian buffers for protecting riparian habitat of the San Diego River and Murphy Canyon Creek corridors.
- (3) None of the mitigation measures in the final certified version of the Draft Environmental Impact Report is less stringent than the mitigation measures that are specified in the Draft Environmental Impact Report, and all of the mitigation measures in the final certified version are adopted to the same extent as, and enforceable in the same manner as, mitigation measures for the project as if it were not exempt from the California Environmental Quality Act.
- (4) No later than the time when the City Council certifies the final version of the Draft Environmental Impact Report, the City has made a binding legal commitment to develop the remainder of the Qualcomm Stadium site in accordance with sub-section (a) of this section.
- (5) The project fully complies with the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 as it existed on October 26, 2015, including but not limited to satisfying the California Legislature's finding and declaration in Public Resources Code Section 21178(e) that the project does not require any taxpayer financing by or from any public agency, including but not limited to the City.

If the City fails to satisfy each of the foregoing conditions, then sub-section (b) shall continue to apply and the City may proceed with the project but without the exemption provided by this sub-section (c).

§61.2807 Financial Incentives and Conditions for Tourism-Related Facilities and Infrastructure

- (a) Except as expressly authorized in sub-sections (b)-(d) of this section, the City shall not directly or indirectly provide any form or manner of financial support, lend its credit, pledge anything of value, allow any public asset to be used for less than fair-market value as determined by an independent fee appraiser, or otherwise make any kind of expenditure or commitment for a future expenditure that would in any way facilitate either of the following:
- (1) The development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3); or
 - (2) Any activity or service in furtherance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3) other than public activities and services generally made available throughout the City to the public at large, such as police, fire protection, water, and sewer service.

Nothing in this sub-section (a) shall be construed as prohibiting the City from making any real property it owns or controls within the Overlay Zone available on terms that the City deems reasonable in order to facilitate any development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1) or (b)(3) or any activity or service in furtherance thereof, or in furtherance of the public's interest in maximizing the City's Transient Occupancy Tax revenues including, without reservation, the capture and use of Transient Occupancy Tax increment generated from new construction projects. Any assistance provided by the City pursuant to this paragraph shall comply with all other applicable legal requirements.

Further, nothing in this sub-section (a) shall apply to a project on a parcel within the geographic boundaries of the Overlay Zone that received any land-use approval before this Division takes effect.

It is the sense of the qualified electors that the highest and best use of land within the Overlay Zone is an off-waterfront expansion of the San Diego Convention Center.

(b) Any Operator of a Hotel who pays an assessment to the Downtown Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:

- (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.
- (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (b)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 2%.

For example, assuming that the total Rent during the remittance period is \$100, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.02 = \2 .

(c) Any Operator of a Hotel who pays an assessment to the Suburban Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:

- (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.
- (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this

sub-section (c)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by the actual rate of assessment up to 2%.

For example, assuming that the total Rent during the remittance period is \$100, and that the actual rate of assessment is 1.5%, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.015 = \1.50 .

- (3) The other provisions of this sub-section (c) notwithstanding, no deduction may be taken if the Operator is not being assessed by the district (i) at the rate of not more than 0.25% for the maintenance, repair, restoration, or remodeling of the San Diego Convention Center within its existing physical footprint in the coastal zone; and (ii) at the additional rate of at least 0.25% for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone.
- (d) Any Operator of a Hotel who pays an assessment to a tourism marketing district that is not operating under the San Diego Tourism Marketing District Procedural Ordinance as codified in Division 25 of Article 1 of Chapter 6 of this Municipal Code at the time this section takes effect may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the tourism marketing district, subject to all of the following procedures and limitations:
 - (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.
 - (2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (d)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 0.55% in the case of a Hotel with less than 30

rooms available for Occupancy, or by 2% in the case of a Hotel with at least 30 rooms available for Occupancy.

For example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with at least 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.02 = \2 .

As a further example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with less than 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.0055 = \0.55 .

- (e) Sub-sections (b)-(d) of this section shall have no force or effect while Section 35.0128(a) of this Municipal Code remains in force and effect.

§61.2808

Governance of Tourism Sales and Marketing and Convention Center Bookings; Withdrawal of Authority to Outsource Governance and Bookings; Alternative Financing for Off-Waterfront Convention Center Expansion

- (a) In order to maximize the City's Transient Occupancy Tax revenues, as well as optimize the planning and budgeting process for tourism- and entertainment-related facilities and infrastructure, it is the sense of the qualified electors that the City shall take all reasonable steps to consolidate City-wide tourism and San Diego Convention Center management, sales and marketing, and bookings.
- (b) The City may enter into a management agreement with a private contractor to manage and oversee the operations and maintenance of the San Diego Convention Center, including any related facility outside the coastal zone. Any such agreement shall be subject to the following procedures and limitations:
 - (1) The management agreement shall give the contractor responsibility for all short-term and long-term bookings at the Convention Center and any related facility under the City's control immediately prior to the making of the agreement.
 - (2) The management agreement shall require the contractor to assume all liabilities, debts, and other contractual obligations, and other obligations of the City, the San Diego Convention Center Corporation, and the Convention Center Expansion Financing Authority in existence at the time the agreement between the City and the contractor is made, including but not limited to deferred

maintenance and current maintenance, labor and employment agreements, booking commitments, and lease agreements; except that the contractor need not assume, and the City shall retain, the City's debt-service obligations under any indentures and related contractual obligations for bonded indebtedness related to the Convention Center. Except as expressly permitted in the preceding sentence, the contractor may not assume less than all such liabilities, debts, contractual obligations, and other obligations. Prior to the City's approval of the management agreement, the contractor shall submit a detailed written plan specifying how and when each assumed obligation will be satisfied. The plan shall ensure that all obligations that were not satisfied by the City prior to its approval of the management agreement, and all obligations that must be satisfied by the City during the term of the management agreement but are being assumed by the contractor, are satisfied by the contractor in a timely manner and in any event no later than the end of the term of the management agreement. Not more than 90 days after the end of each fiscal year of the contractor, the contractor's chief executive officer or president shall certify under penalty of perjury that the contractor satisfied all obligations that were required to be satisfied according to the plan during the ended fiscal year. The annual certification shall include the information required by sub-sections (b)(11)(i)-(ii) of this section. The City shall not make any payment to the contractor, including any reimbursement, more than 90 days after the end of the contractor's fiscal year unless and until the City receives the certification required by this sub-section.

- (3) The City may not compensate the contractor or provide any direct or indirect financial support of any kind to the contractor in connection with the management agreement, except as expressly authorized by sub-section (b)(4) of this section. The contractor may hire a fee-for-service manager to carry out the contractor's obligations under the management agreement, at no cost to the City. The contractor's decision to hire such a manager shall not relieve the contractor of its obligations to ensure the performance required by the management agreement with the City, or change the nature of the relationship between the City and the contractor under the agreement.
- (4) The City, the contractor, or both may enter into any other agreement with any third party for the purpose of generating assessments or other revenues that can be used by the contractor to promote the City as a tourist destination or to compensate the contractor for its

services under the management agreement with the City, provided that there is no cost to the City beyond that authorized by sub-section (b)(3) of this section. Nothing in this paragraph relieves the City of its obligation to comply with all applicable laws if its involvement is required for the generation of such assessments or revenues.

- (5) The contractor's governing body shall have at least one member who meets all of the following criteria:
 - (i) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.
 - (ii) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.
 - (iii) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.
 - (iv) The member is recommended by the Mayor and approved by the City Council.
- (6) The contractor's governing body shall have at least one member who meets all of the following criteria:
 - (i) The member is a member of a labor union for at least one year prior to appointment to the governing body.
 - (ii) The member is recommended by the Mayor and approved by the City Council.
- (7) The management agreement may not contain any term or provision that is inconsistent with this section, but it may contain any other term or provision that is consistent with this section and that the City deems necessary or appropriate.
- (8) The contractor may be, but is not required to be, a tourism-financed improvement district created and approved under Sections 61.2802

and 61.2803; or a tourism marketing district that is operating under a legal authority other than the San Diego Tourism Marketing District Procedural Ordinance as codified in Division 25 of Article 1 of Chapter 6 of this Municipal Code at the time this section takes effect.

- (9) The contractor's governing board shall be subject to the Ralph M. Brown Act, and the contractor shall be subject to the California Public Records Act, for all purposes related to the management agreement.
 - (10) A fiduciary relationship between the contractor and the City under the management agreement is created by this section, with the contractor being required to act as a fiduciary toward the City and over all of the assets, operations, and other subject matter of the agreement. This relationship includes but is not limited to the contractor's obligation to maximize the City's return on the assets, operations, and other subject matter of the management agreement. Any management agreement under which the contractor is not deemed to be a fiduciary shall be void *ab initio*.
 - (11) The annual certification required under sub-section (b)(2) of this section shall include all of the following information:
 - (i) The City's total Transient Occupancy Tax revenues during the recently completed fiscal year that were directly attributable to events taking place at the San Diego Convention Center during that fiscal year.
 - (ii) The City's total expenditures related to the San Diego Convention Center during the recently completed fiscal year.
 - (12) If any labor agreement expires and the parties reach an impasse in attempting to renegotiate, extend, amend, or otherwise modify that agreement, the matter shall be submitted to binding arbitration.
- (c) The City shall have no authority to enter into a management agreement as described in sub-section (b) of this section or any other agreement with a private contractor concerning the management of or bookings at the San Diego Convention Center, unless and until the following condition is satisfied:

- (1) A tourism-financed improvement district has been created and approved under Sections 61.2802 and 61.2803 exclusively for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone with a size deemed appropriate by the City, and all required maintenance, for a period of operation not less than 20 years.
- (d) If the condition described in sub-section (c) of this section is not satisfied by the last day of the sixtieth calendar month after this section takes effect, then all of the following shall apply:
 - (1) The City's authority to enter into a management agreement pursuant to sub-section (b) of this section shall be deemed withdrawn, and sub-section (b) shall have no further force or effect.
 - (2) Sections 61.2802 and 61.2803 shall be deemed withdrawn and shall have no further force or effect, and no district created thereunder shall have the legal authority to continue its operations.

§61.2809 Definitions

- (a) As used in this Division, "coastal zone" means the geographical area defined by California Public Resources Code Section 30103 (and any regulations thereunder), regardless of whether the City has land-use or other regulatory authority within the area.
- (b) As used in this Division, "City" shall include any and all departments, agencies, and offices of the City, and shall also include each and every discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30, 2014, and each and every component unit of any kind that may be included in a future Comprehensive Annual Financial Report for the City of San Diego.
- (c) As used in Section 61.2808, "private contractor" means an entity that is not a discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30, 2014.

- (d) As used in this Municipal Code, "independent fee appraiser" means an appraiser who is selected for the assignment solely by the City, and who certifies in writing under penalty of perjury and based on personal knowledge that he or she has had no financial relationship of any kind with any party to the proposed transaction other than the City within a one-year period prior to being selected by the City for the assignment.
- (e) As used in Sections 61.2802 and 61.2807, "Operator" and "Hotel" have the same meanings that they have under Section 35.0102 of this Municipal Code.
- (f) As used in this Division, "project" has the same meaning that it has under California Public Resources Code Section 21065.
- (g) As used in this Division, "qualified electors" has the same meaning that it has under San Diego City Charter Section 6.
- (h) As used in this Division, "California Public Records Act" refers to the California Public Record Act, California Government Code Section 6250 *et seq.*
- (i) As used in this Division, "Ralph M. Brown Act" refers to the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*
- (j) As used in this Division, "California Environmental Quality Act" refers to the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*
- (k) As used in Section 61.2802, "Transient Occupancy Registration Certificate" has the same meaning that it has under Section 35.0113 of this Municipal Code.
- (l) As used in Section 61.2807(b)-(d), "Rent" has the same meaning that it has under Section 35.0102 of this Municipal Code.
- (m) As used in this Division, "Property and Business Improvement District Law of 1994" and "PBID Law" refer to the Property and Business Improvement District Law of 1994, California Streets and Highways Code, Division 18, Part 7, Section 36600 *et seq.*

§61.2810 Construction of Division

In the event of any conflict between one or more provisions of this Division and any other provision of the Municipal Code, the provisions of this Division shall govern

to the extent of the conflict. In the event of any conflict between one or more provisions of this Division and any provision of the Property and Business Improvement District Law of 1994, this Division shall control to the extent of the conflict.

§61.2811 Limitations Period for Judicial Review

No action to challenge the validity of any portion of this Division shall be maintained unless such action is commenced within 90 days after the Division takes effect.

Part 5. Effective Date; Amendment

This Ordinance shall take effect 30 days after the date of the election at which the qualified electors approve it. The Ordinance may be repealed or amended only by a vote of the qualified electors. As used in this paragraph and the next paragraph, "qualified electors" has the same meaning that it has under San Diego City Charter Section 6.

Part 6. Interdependence; Interpretation

The provisions of Part 4 of this Ordinance are inseparably interconnected and interdependent. If any portion of Part 4 of this Ordinance is held to be invalid by a court of competent jurisdiction after any and all appeals are complete, then none of the remaining portions of the Ordinance shall have any force or effect.

The need for responsible comprehensive and integrated planning, financing, management, and sales and marketing for major tourism- and entertainment-related resources as described in this Ordinance is so important to the qualified electors voting on this measure that if any portion of Part 4 of the Ordinance is invalid as described above then the remaining portions of the Ordinance would not have been approved by them without the invalid portion of Part 4.

Nothing in this Ordinance is intended to conflict with any requirement, prohibition, or other provision of the San Diego City Charter, the California Constitution, or any other controlling legal authority. Constructions of this Ordinance that give rise to such a conflict shall be avoided to the maximum extent permitted by law.

Part 7. Resolution of Conflicting Provisions in Other Measures

In the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but this Ordinance receives a greater number of affirmative votes, it is the intent of the People of the City of San Diego that the provisions of this Ordinance shall prevail in their entirety and the provisions of all other related ordinances shall be null and void.

The other provisions of law notwithstanding, in the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but such other ordinance or ordinances receive a greater number of affirmative votes, it is the intention of the People of the City of San Diego that the provisions of this Ordinance shall also take effect to the extent that they are not in direct conflict with the provisions of such other ordinance or ordinances.

Part 8. Defending the Ordinance

In the event that the City declines to defend or declines to appeal an adverse judgment against the Ordinance, it is the intent of the People of the City of San Diego to grant formal legal authority to the Ordinance's proponents or any of their designees to defend this Ordinance, either by intervening in or by defending the Ordinance on behalf of the People and the City in a legal proceeding, because the proponents of this Ordinance have a direct and personal stake in defending this Ordinance.

In the event that a proponent or a proponent's designee is defending this Ordinance in a legal proceeding because the City has declined to defend it or declined to appeal an adverse judgment against it, the proponent or the proponent's designee shall: (1) act as agents of the People of the City of San Diego who approved this Ordinance and the City; (2) enjoy and be subject to all ethical, legal, and fiduciary rights and duties applicable to agents of the People and the City in such legal proceedings; and (3) take or be subject to the Oath of Office prescribed by Section 211 of the San Diego City Charter for the limited purpose of acting on behalf of the People and the City in such legal proceeding.

No action to challenge the validity of any portion of this Ordinance shall be maintained unless such action is commenced within 90 days after the Ordinance takes effect. In the event of such a challenge, the summons and complaint shall be served, as required by law, on the City and on the proponent of this Ordinance not more than 30 days after the challenge is commenced. The court shall dismiss any challenge that is not commenced within the time period prescribed in this paragraph.

If any of the deadlines prescribed in the preceding paragraph is held to be invalid by a court of competent jurisdiction, the court shall be authorized to reform the deadline to the shortest period of time permissible by law.

Part 9. Proponent Accountability

The People of the City of San Diego hereby declare that the proponent of this Ordinance should be held civilly liable if this Ordinance, after passage, is struck down in whole or in part, by a court of competent jurisdiction for being impermissible pursuant to the federal law, state law, the city charter, or any other controlling legal authority. Such an impermissible Ordinance is a misuse of the City's electoral resources, and the proponent must be held accountable for such an occurrence.

If this Ordinance, after passage, is struck down in whole or in part, by a court of competent jurisdiction for being impermissible pursuant to the federal law, state law, the city charter, or any other controlling legal authority, and all avenues for appealing and overturning the court's decision have been exhausted, the proponent shall pay a civil penalty of \$5,000 to the City's General Fund for failure to be the proponent of a wholly permissible Ordinance. No party or entity may waive this civil penalty.

* * *

Relevant Documents Referred to in the Ordinance

Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code,
Transient Occupancy Tax

Section 35.0101 Purpose and Intent

(a) It is the purpose and intent of the City Council that there shall be imposed a tax on Transients.

(b) Some of the proceeds of the tax on Transients shall be used for promoting the City of San Diego, including the planning, construction, maintenance and operation of tourist-related cultural, recreational and convention facilities, as more particularly set forth in Chapter 3, Article 5, Division 1, and for those additional general governmental purposes as more particularly set forth in Chapter 3, Article 5, Division 1, as the City Council may from time to time provide in accordance with the Charter of the City and the City Council's appropriation ordinance.

Section 35.0102 Definitions

The following definitions are applicable to Chapter 3, Article 5, Division 1:

"Campground" means any park or real property where a Person may locate a tent, trailer, tent trailer, pick-up, camper, or other similar temporary structure for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary facilities are provide.

"Collected" means the time at which the Rent is earned if an Operator uses the accrual basis of accounting, or the time at which Rent is received if an Operator uses the cash basis of accounting.

"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 is held out as such to the public. "Hotel" does not mean any hospital, convalescent home, or sanitarium.

"Occupancy" means the use or possession, or the right to the use or possession, of any room, or portion thereof, in any Hotel, or space in a Recreational Vehicle Park, or Campground for dwelling, lodging, or sleeping purposes.

"Operator" means the Person who is the proprietor of the Hotel, Recreational Vehicle Park, or Campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. "Operator" includes a managing agent, a resident manager, or a resident agent, of any type or character, other than an employee without management responsibility.

"Recreational Vehicle" means any passenger vehicle, house car, trailer coach, camper, or camper trailer, as defined in California Vehicle Code sections 242, 243, 362, 465, 635, or California Health and Safety Code section 18010.

"Recreational Vehicle Park" means any park or location where a Recreational Vehicle may be parked for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary hookup facilities are provided. A "Recreational Vehicle Park" may include a Campground.

"Rent" means 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, or a space in a Recreational Vehicle Park or Campground. "Rent" includes charges for utility and sewer hookups, equipment, (such as rollaway beds, cribs and television sets, and similar items), and in-room services (such as movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor, or otherwise. "Rent" includes all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom.

"Successor to Operator" means any person who acquires the right to operate a hotel, recreational vehicle park, or campground from a predecessor Operator, directly or indirectly, by whatever means, including purchase, foreclosure, operation of lease, or other means. A transfer of an ownership or management interest in a hotel, recreational vehicle park, or campground wherein the facility continues to operate as such, either continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this division.

"Transient" means 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 less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.

Section 35.0103 Tax Imposed

For the privilege of Occupancy in any Hotel located in The City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator.

Section 35.0104 Additional Tax Imposed

Notwithstanding the tax imposed by Section 35.0103 and in addition thereto, commencing on January 1, 1985 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

Section 35.0105 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103 or 35.0104 and in addition thereto, commencing on August 1, 1988 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

Section 35.0106 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104 or 35.0105 and in addition thereto, commencing on June 1, 1989, for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.

Section 35.0107 Recreational Vehicle Park and Campground User Tax Imposed

Commencing on September 1, 1990, for the privilege of Occupancy in any Recreational Vehicle Park or Campground, each Transient is subject to and shall pay a tax in the amount of nine percent (9%) of the Rent charged by the Operator.

Section 35.0108 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, or 35.0107 and in addition thereto, commencing on August 1, 1994, for the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of one and one half percent (1.5%) of the Rent charged by the Operator.

Section 35.0110 Tax as Debt; Time and Manner of Payment

- (a) Any tax imposed pursuant to Chapter 3, Article 5, Division 1, constitutes a debt owed by each Transient to the City which is extinguished only by payment to the Operator or to the City.
- (b) Each Transient shall pay any tax imposed pursuant to Chapter 3, Article 5, Division 1, to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground at the time Rent is paid.
- (c) If Rent is paid in installments, a proportionate share of the tax shall be paid by each Transient with each installment.
- (d) The unpaid tax shall be due upon each Transient's ceasing to occupy a room, or portions thereof, in a Hotel, or space in a Recreational Vehicle Park or a Campground.
- (e) If for any reason the tax due is not paid by the Transient to the Operator of the Hotel, the Recreational Vehicle Park, or the Campground, the City Treasurer may require that the tax be paid directly to the City Treasurer.

Section 35.0111 Exemptions

- (a) No tax shall be due or collected pursuant to Chapter 3, Article 5, Division 1, in the following cases:
 - (1) when the Transient has exercised Occupancy or was entitled to Occupancy for one month or more;
 - (2) when the total space rental charge at a Campground or Recreational Vehicle Park or the room rental charge in a Hotel is twenty-five dollars (\$25.00) a day or less or the accommodations rented are in a dormitory and the total Rent for each Transient is twenty-five dollars (\$25.00) a day or less; or
 - (3) when the Transient is by treaty, or federal law, or state law exempt from payment of transient occupancy taxes; or
 - (4) when Hotel Rents are directly paid by the United States Government or the State of California or their respective instrumentalities. This exemption does not exempt a transient who is employed by an exempt entity from payment of the tax when the payment is later to be reimbursed by the entity.
- (b) Any Person who occupies a room, or any portion thereof, in a Hotel, or space in a Recreational Vehicle Park or Campground, or is entitled to Occupancy thereof, for a period of one (1) month or more, shall be deemed not to have been a Transient with respect to the first month of Occupancy or entitlement to Occupancy.

Section 35.0112 Operator's Duties and Accounting Procedures

- (a) Each Operator shall collect the tax imposed by Chapter 3, Article 5, Division 1, to the same extent and at the same time as the Rent is collected from every Transient.
- (b) If an Operator collects the Rent but fails to collect the tax imposed by Chapter 3, Article 5, Division 1, for any reason, the City shall require the Operator to pay the tax.
- (c) The amount of tax charged each Transient shall be separately stated from the amount of

Rent charged, and each Transient shall receive a receipt for payment from the Operator.

(d) A duplicate of the receipt given to each Transient shall be kept by the Operator in accordance with Section 35.0121.

(e) No Operator of a Hotel, a Recreational Vehicle Park, or a Campground shall advertise or state in any manner, whether directly or indirectly, that the tax charged pursuant to Chapter 3, Article 5, Division 1, or any part thereof, will be assumed or absorbed by the Operator or that it will not be added to the Rent or that, if added, any part will be refunded except in the manner hereinafter provided.

(f) Each Operator shall account separately for, and maintain separate monthly summary totals for taxable and nontaxable Rents and for taxes collected.

(g) Each Operator shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer.

(h) The costs of additional goods and services, which are not Rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a Hotel, or a space in a Recreational Vehicle Park or Campground (such as golf, tennis, meals), shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

Section 35.0113 Registration

(a) Within thirty (30) days after the effective date of this Article, or within thirty (30) days after commencing business, whichever is later, each operator renting occupancy to transients shall register with the City Treasurer and obtain a "Transient Occupancy Registration Certificate" to be posted at all times in a conspicuous place on the premises. Said certificate shall include the following:

(1) The name of the operator;

(2) The address;

(3) The date upon which the certificate was issued;

(4) The following statement: "This Transient Occupancy Registration certificate signifies that the person named on the face hereof is required to collect a transient occupancy tax from transients and to remit the same to the City Treasurer and has fulfilled the requirements of the Transient Occupancy Tax Ordinance by registering with the City Treasurer for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Treasurer. This certificate does not constitute a permit to operate a hotel, recreational vehicle park or campground business."

(b) It shall be unlawful to operate a hotel, recreational vehicle park or campground without a Transient Occupancy Tax Certificate or to fail to post the certificate in a conspicuous place at all times.

Section 35.0114 Remitting and Reporting

(a) Each Operator shall remit monthly the full amount of taxes collected for the previous month with the appropriate approved return form available from the City Treasurer.

(b) Returns and taxes remitted monthly by an Operator and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.

(c) Returns shall be made by each Operator on a calendar month basis unless a reporting basis other than a calendar month reporting period is approved. An Operator that desires to utilize

a reporting period other than a calendar month reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan.

(d) Each Operator reporting on a calendar month basis shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the previous month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

(e) Each Operator reporting on an approved basis other than a calendar month basis shall submit, on or before the same day of the next month following the close of such reporting period, or on the last day of that month if no corresponding calendar day exists, a return on the appropriate approved forms to the City Treasurer of the total taxable Rents charged and the amount of tax collected for the month and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the City Treasurer.

(f) Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.

(g) All taxes collected by an Operator pursuant to Chapter 3, Article 5, Division 1, shall be held in trust for the account of the City until payment thereof is made to the City Treasurer.

(h) All returns and payments submitted by each Operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

(i) The same basis for accounting used by an Operator for keeping books and records shall be used for reporting and remitting.

Section 35.0115 Remitting and Reporting Requirements upon Cessation of Business

(a) An operator who is transferring, selling or terminating its business shall notify the City Treasurer in writing of such sale, transfer or termination and the name and address of the purchaser or transferee at least thirty (30) days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty (30) day period prior to the transfer, sale or termination, in which case the operator shall then immediately notify the City Treasurer.

The operator shall, at the same time, notify the purchaser or transferee of their responsibility for unpaid collected taxes as set forth in sections 35.0137 and 35.0138, and further certify in writing to the City Treasurer that the transferee or purchaser was notified of the requirements of this Article regarding its responsibility for unpaid collected taxes.

(b) Cessation of Business. Each operator upon cessation of business for any reason shall, on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding day exists, make a return to the City Treasurer on approved forms of the total taxable rents charged, the amount of tax collected for the reporting period, remittances made, if any, and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due, if any, shall be remitted to the City Treasurer. After filing the final return

and remitting the balance due, the operator shall make his records of account available for a closeout audit by the City Treasurer or duly authorized City employee. Returns filed and taxes remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding calendar day exists shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 35.0116.

(c) The liability of the transferee or purchaser for transient occupancy taxes collected by the transferor or seller is set forth in sections 35.0137 and 35.0138.

(d) Any operator who fails to comply with the provisions of subsections (a) or (b) hereunder is guilty of a misdemeanor.

Section 35.0116 Penalties

(a) **Delinquency.** Any operator who fails to remit any tax imposed by this Article within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one-third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty-five percent (25%) of the amount of the tax due and payable for the entire reporting period in addition to the amount of the tax.

(b) **Fraud.** If the City Treasurer determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.

(c) **Audit Deficiency.** If, upon audit by the City, an operator is found to be deficient in either its return or its remittance or both, the City Treasurer shall immediately invoice the operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the operator fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one-third of one percent (1/3 of 1%) per day of the net deficiency, not to exceed fifteen percent (15%) for a combined total penalty not to exceed twenty-five percent (25%) of the net deficiency.

Section 35.0117 Failure to Collect or Report Tax— Jeopardy Determination

(a) **Determination of Tax by City Treasurer.** If any operator shall fail or refuse to collect the tax or to make, within the time provided in this Article, any report or remittance of said tax or any portion hereof required by this Article or if such operator maintains records which are inadequate to show the amount of tax due, the City Treasurer shall forthwith assess the tax and penalties provided for by this Article against the operator.

(b) **Jeopardy Determinations.** When an operator fails or refuses to make or file a timely return or remittance of taxes, or when the City Treasurer or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures or by estimation if no records are available, that an operator is or will be unable to remit any taxes collected or otherwise due at the prescribed time, the City Treasurer may make a written Jeopardy Determination which shall be issued to the operator to require the operator to thereafter furnish additional information or provide adequate security as necessary to ensure collection of any taxes due or to become due, and to remit the taxes on a daily or weekly basis. The operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the City Treasurer. The City Treasurer shall cancel the requirements imposed under the Jeopardy Determination once timely accounting and remittance procedures have been established and the operator is satisfying all obligations imposed by law for the remittance of taxes.

(c) Notice. The City Treasurer shall deliver notice of the assessment or of the Jeopardy Determination to the operator or deposit it in the United States mail, postage prepaid, addressed to the operator at the last known place of business.

Section 35.0118 Administrative Remedies and Appeals

(a) The operator may within fourteen (14) days after the serving or mailing of such notice make application in writing to the City Treasurer for a hearing on the amount assessed pursuant to section 35.0117. If timely application for a hearing is not made, the tax and penalties determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the operator of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller and the Financial Management Director or the duly appointed deputy of each. At the hearing, the operator may appear and offer evidence why the specified tax and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax to be remitted. After the hearing, the City Treasurer shall give written notice to the operator in the manner prescribed herein of the determination and the amount of such tax and penalties. If the amount remaining in dispute thereafter does not exceed \$750.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the operator's administrative remedies. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the tax due unless a further appeal is filed with the City Manager as provided in this section within that fourteen (14) day period for any amount in excess of \$750.00.

(b) When an appeal from the hearing board for remaining taxes and penalties exceeding \$750.00 is filed, the City Manager shall cause the appeal to be assigned to a Hearing Officer, who shall schedule a hearing to be heard within a reasonable time thereafter. The Hearing Officer shall be appointed by the City Manager, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by The City of San Diego for the time spent on deciding an appeal.

(c) The appellant and the City Manager or designate shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by Subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.

(d) The Hearing Officer is authorized to rule upon issues of law or fact and to determine the amount of the tax or penalty in accordance with this Article. The Hearing Officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax or penalty found to be duly imposed.

(e) The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City Manager. Any amounts due shall be immediately payable to the City Treasurer.

(f) The City Manager shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

Section 35.0121 Records

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this Article to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such tax for which the operator is liable for collection and payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the City Treasurer, or the City Auditor when so requested by the City Treasurer.

Section 35.0122 Refunds

(a) Whenever the amount of any tax or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or erroneously received by the City under this article, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.

(b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the City Treasurer that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (a) of this section, but only when the transient having paid the tax to the operator establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) An operator who has remitted an amount in excess of the amount required to be paid by this article may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the operator. Such credit, if approved by the Treasurer, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the Treasurer.

(e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Section 35.0123 Actions to Collect Taxes and Enforcement of Liens

(a) Any tax required to be paid by any transient under the provisions of this Article shall be deemed a debt owed by the transient to the City and payable through the operator. Any tax collected by an operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the operator to the City pursuant to the provisions of this Article. Any person owing money to the City under the provisions of the Article shall be liable to an action brought in the name of The City of San Diego for the recovery of such

amount. Upon the concurrence of the City Attorney and the City Auditor and Comptroller, the City Treasurer is authorized to compromise the collection of the amount or establish a schedule of payment for any tax due, or to discontinue the collection of any claim if it appears that further proceedings would be without merit.

(b) Recording of a Certificate of Lien. If any amount required to be paid to the City under this Article is not paid when due, the City Treasurer may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties due, the name and address of the operator liable for the same, a statement that the City Treasurer has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the operator. From the time of the recording of the certificate, the amount required to be paid together with penalties constitutes a lien upon all real property in the county owned by the operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a tax lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

(c) Warrant for Collection of Tax. At any time within three (3) years after the recording of a certificate of lien under Section 35.0123(b), the City Treasurer may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The City Treasurer may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(d) Seizure and Sale. In lieu of issuing a warrant under subsection (c), at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under section 35.0123(b), the City Treasurer may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

Section 35.0124 Violations and Criminal Proceedings

(a) Any operator who wilfully fails to collect or cause to be collected the transient occupancy tax due from a transient is guilty of misdemeanor.

(b) Any operator who wilfully fails to file or cause to be filed any return required by this Article, or who files or causes to be filed a false return, or who wilfully fails or refuses to remit or cause to be permitted any tax collected, or who refuses to allow an audit to be conducted, is guilty of a misdemeanor.

(c) The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.

(d) Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.

(e) Any operator violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.

(f) Violations shall be punishable as misdemeanors by a fine of not more than one thousand

dollars (\$1,000) or by imprisonment in the County jail for a period of not more than six (6) months or by both such fine and imprisonment.

(g) Non-defense. It shall not be a defense to violations of this Article that the operator, including a resident manager, had forwarded any return due or tax collected to its principal or corporate headquarters, nor that any failure to file or remit taxes was based on the direction or inaction of such principal or corporate headquarters.

Section 35.0127 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 35.0128 Utilization of Revenues from Tax Imposed by Section 35.0103

All revenues collected pursuant to the tax imposed by the City under Section 35.0103 shall be utilized as follows:

(a) Two-thirds (2/3) of all revenues collected by the City and remaining after payment of two-thirds (2/3) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund and used solely for the purpose of promoting the City. However, if the City Manager determines that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Manager may ask the City Council to temporarily suspend compliance with this subsection (a) for the upcoming fiscal year. A majority vote of the City Council can temporarily suspend compliance with this subsection (a) for that fiscal year.

(b) One-sixth (1/6) of all revenue collected by the City and remaining after payment of one-sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited in the Transient Occupancy Tax Fund. Money shall be expended from this fund only by an ordinance appropriating part or all of the fund for any purpose the City Council may direct, including, but not limited to, promotion of the City.

(c) One-sixth (1/6) of all revenue collected by the City and remaining after payment of one-sixth (1/6) of the costs incurred in the administration of Chapter 3, Article 5, Division 1 shall be deposited to the General Fund. An annual allocation, as determined by the City Council, from revenues collected pursuant to the tax imposed by the City under Section 35.0103 may be deposited in the Housing Trust Fund of the City.

Section 35.0129 Utilization of Revenues from Additional Tax Imposed by Section 35.0104

All revenues collected pursuant to the tax imposed by the City under Section 35.0104 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

Section 35.0130 Utilization of Revenues from Additional Tax Imposed by Section 35.0105

All revenues collected pursuant to the tax imposed by the City under Section 35.0105 shall be deposited in the General Fund of the City and be used for general governmental purposes as the

City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

Section 35.0131 Utilization of Revenues from Additional Tax Imposed by Section 35.0106

All revenues collected pursuant to the tax imposed by the City under Section 35.0106 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

Section 35.0132 Utilization of Revenues From Tax Imposed by Section 35.0107

All revenues collected pursuant to the tax imposed by the City under Section 35.0107 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

Section 35.0133 Utilization of Revenues From Tax Imposed by Section 35.0108

All revenues collected pursuant to the tax imposed by the City under Section 35.0108 shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance.

Section 35.0136 Treasurer's Regulations and Enforcement Authority

The City Treasurer may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article. Designated agents of the City Treasurer shall have the authority to arrest without a warrant any violator of a misdemeanor provision of this Article and to issue notices to appear pursuant to the provisions of Penal Code section 836.5.

Section 35.0137 Duty of Successor of Operator

If an operator who is liable for any tax or penalties under this Article sells or otherwise disposes of his business, his successor shall notify the City Treasurer of the date of sale at least thirty (30) days before the date of sale or, if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the Treasurer showing that the tax or penalty has been paid or a tax clearance certificate from the City Treasurer stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the City Treasurer pending settlement of the account of the seller.

Section 35.0138 Liability of Successor for Failure to Withhold: Notice of Amount Due

If the successor to the business fails to withhold a portion of the purchase price as required, it shall be liable to the City for the payment of the amount required to be withheld. Within thirty (30) days after receiving a written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the City Treasurer shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City Treasurer of the estimated amount of the tax and -penalty that must be paid as a condition of issuing the certificate.

Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, San Diego Tourism Marketing District Procedural Ordinance

Section 61.2501 Purpose and Intent

The purpose and intent of this Division is:

- (a) To allow for the establishment of a tourism marketing district to provide for tourism development, including coordinated joint marketing and promotion of San Diego businesses, in order to retain and expand the lodging industry which is one of the top revenue generators for the San Diego economy and a key employment sector.
- (b) To create a mechanism to fund promotional activities for tourism development through the levy of assessments upon the businesses to which the special and specific benefit from those activities is conferred.
- (c) To provide a method for the involvement of a nonprofit entity to participate in the preparation and review of proposed tourism marketing district plans for district activities.
- (d) To provide a method for the City Council to authorize a nonprofit entity with specific interest in the promotion of City tourism to implement and administer district activities.
- (e) To provide a mechanism with which a charge may be imposed for a special and specific benefit conferred directly to the payors that is not provided to those not charged and which does not exceed the reasonable costs to the City of San Diego of conferring the benefit.

Section 61.2502 Citation of Division

This division may be cited as the San Diego Tourism Marketing District Procedural Ordinance.

Section 61.2503 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the San Diego City Council to order the work shall void or invalidate such procedure for any assessment or the cost of the work done thereunder.

Section 61.2504 Definitions

For purposes of this division, defined terms appear in italics. The following definitions apply in this Division:

"Activities" means, but is not limited to, the promotion and marketing of assessed businesses to provide a special and specific benefit to assessed businesses within the district that is not provided to those not paying the assessment.

"Assessment" means a levy for the purpose of conducting activities which will provide a special and specific benefit to the assessed businesses located within a tourism marketing district is not provided to those not paying the assessment. Assessments levied under this Division are not special taxes.

"Business" means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes.

"Business owner" means the owner, operator, or authorized representative of the business who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to San Diego Municipal Code section 35.0114.

"District management plan" or "plan" means a proposal as defined in sections 61.2507.

"Tourism marketing district," or "district," means an area established pursuant to this Division,

within which businesses pay assessments to fund activities.

"Tourism marketing district association" or "association" means a private nonprofit entity which represents, and whose membership includes only the assessed business owners or business owners' representatives in a district and which participates in the preparation and review of proposed district management plans for district activities that provide a special and specific benefit to assessed businesses that is not provided to those that are not assessed. A tourism marketing district association may be an existing nonprofit entity or a newly formed nonprofit entity. In accordance with California Streets and Highways Code section 36614.5, the association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

"Transient" has the same meaning as in San Diego Municipal Code section 35.0102.

Section 61.2505 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain activities. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for activities or the raising of revenue for the benefit of businesses.

Section 61.2506 Establishment of Tourism Marketing District

A tourism marketing district may be established as provided in this Division, in the following manner:

(a) Upon the submission of a written petition, signed by the business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the City Council will initiate proceedings to establish a district by the adoption of a resolution expressing its intention to establish a district. Where the same business owner would be assessed an amount in excess of 40 percent of the total amount of all assessments proposed to be levied, that business owner's share of the assessment over such 40 percent shall not be included in determining whether the petition is signed by business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of business owners required under subdivision (a) shall include a summary of the district management plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete district management plan can be obtained.
- (3) Information specifying that the complete district management plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities, the amount of the proposed assessment, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the tourism marketing district and the levying of assessments, which shall be consistent with the requirements of section 61.2508.

Section 61.2507 Tourism Marketing District Management Plan

The district management plan shall contain all of the following:

- (a) A map of the district.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. Nothing in this Division prohibits the boundaries of a district created pursuant to this Division to overlap with other districts created pursuant to this Division or assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code sections 36500 -36551, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code sections 36600 - 36671.
- (d) The general description of activities proposed for each year of operation of the district and the estimated maximum cost thereof.
- (e) The estimated total annual amount proposed to be expended each year for administration and operation of the district.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of the assessment to be levied against their business.
- (g) The planned frequency for the levying of the assessments.
- (h) The specific number of years in which assessments will be levied. The maximum term for any district is 40 years. The district management plan may set forth specific changes in assessments for each year of operation of the district.
- (i) The proposed timing and duration of activities under the plan.
- (j) Any proposed rules and regulations to be applicable to the district.
- (k) A list of the businesses to be assessed then in existence.
- (l) A description of the procedures utilized by the association for the nomination and election of the association's board of directors.
- (m) Any other item or matter required to be incorporated therein by the San Diego City Council, the San Diego Municipal Code, or any other applicable law. The district management plan shall be approved by City Council at the time City Council considers the petition of businesses seeking to establish a tourism marketing district. Should the businesses or the tourism marketing district association seek to modify the plan at any time, such modifications shall be subject to the requirements of sections 61.2519 and 61.2520.

Section 61.2508 Notice of Proposed Assessments; Public Hearing

- (a) If the City Council proposes to levy a new or increased assessment pursuant to this Division, the City shall comply with the following notice, protest, and hearing procedures:
 - (1) The City Council shall identify all businesses which will have a special and specific benefit conferred on them by the activities and upon which an assessment will be imposed.
 - (2) All assessments shall be supported by the management plan.
 - (3) The City shall give notice by mail to the business owner of each identified business. Each notice shall state the estimated total initial annual assessments for the entire district, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and a specific formula in sufficient detail to allow the business owner to calculate the proposed assessment on the business, together with the date, time,

and location of a public hearing on the proposed assessment.

(4) If the proposed assessment formula is based on gross room revenue, the amount of the proposed assessment for each identified business shall be estimated based on gross room rental revenue for the City's most recent complete fiscal year.

(5) Each notice shall also include, in a conspicuous place, a summary of the procedures for the completion, return, and tabulation of the ballots required pursuant to section 61.2508(a)(6), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected business.

The City shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment. On the face of the envelope mailed to the business owner, in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED." The City may additionally place the phrase "OFFICIAL BALLOT ENCLOSED" on the face of the envelope mailed to the business owner, in which the notice and ballot are enclosed, in a language or languages other than English.

(6) Each notice given pursuant to this section shall contain a ballot that includes the City's address for receipt of the ballot and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the business, and his or her support or opposition to the proposed assessment. Each ballot shall be in a form that conceals its contents once it is sealed by the person submitting the ballot. Each ballot shall be signed and either mailed or otherwise delivered to the address indicated on the ballot. Regardless of the method of delivery, all ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to section 61.2508(a)(8). Ballots shall remain sealed until the tabulation of ballots pursuant to section 61.2508(a)(8) commences, provided that a ballot may be submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to this section. The City may provide an envelope for the return of the ballot, provided that if the return envelope is opened by the City prior to the tabulation of ballots pursuant to section 61.2508(a)(8), the enclosed ballot shall remain sealed as provided in this section.

(7) At the time, date, and place stated in the notice mailed pursuant to section 61.2508(a)(3), the City shall conduct a public hearing upon the proposed assessment. At the public hearing, the City shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(8) At the conclusion of the public hearing, a person or persons designated by the City shall tabulate the ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment.

(9) The City Council may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the City Council announces the time and location at the hearing. Technological methods may be used in the tabulation of the ballots, including, but not limited to, punchcard, or optically readable (bar-coded) ballots.

(10) A majority protest exists if the ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the ballots submitted, and not withdrawn, in its favor, weighting those ballots by the amount of the proposed assessment to be imposed upon the identified business

for which each ballot was submitted.

(11) If there is a majority protest against the imposition of a new assessment or an increase in an existing assessment, the City shall not impose or increase the assessment.

(b) In addition to the requirements of section 61.2508(a), the City shall also comply with California Government Code section 54954.6, as it relates to adopting any new or increased assessment.

Section 61.2509 City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries

At the conclusion of the public hearing to establish the district, the City Council may adopt, revise, change, reduce or modify the proposed assessment or the type or types of activities to be funded with the revenues from the assessments. At the hearing, the City Council may only make changes to the boundaries of the proposed tourism marketing district that will exclude territory containing businesses that the City Council finds will not benefit from the proposed activities; and may only change proposed assessments by reducing them.

Section 61.2510 Resolution of Formation of Tourism Marketing District

(a) If the City Council, following a public hearing, decides to establish a proposed tourism marketing district, the City Council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities, the amount of the proposed assessment, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The City Council shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the operations of the district established by the resolution shall be subject to any amendments to this Division.

(6) A statement that the activities to be provided to benefit businesses in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide activities that directly benefit businesses outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the district.

(7) A statement specifying the time and manner for levying the assessments by the City Treasurer.

(8) A statement that any assessment imposed pursuant to this Division is levied solely upon the business owner within the district, that the business owner is solely responsible for payment of the assessment when due, and that, if the business owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as a "San Diego Tourism Marketing District Assessment."

(9) A finding that the activities funded by the assessments will provide a special and specific

benefit to businesses within the tourism marketing district that is not provided to those not paying the assessment.

(b) The adoption of the resolution of formation and recordation of the notice and map pursuant to section 61.2512 shall constitute the levy of an assessment in each of the fiscal years referred to in the district management plan.

Section 61.2511 City Clerk to Record Notice and Map of District

Following adoption of a resolution establishing a district pursuant to section 61.2510 the City Clerk shall record a notice and map of the district.

Section 61.2512 City Council Establishment of Benefit Zones

The City Council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the activities to be provided within the benefit zone, and may impose a different assessment within each benefit zone. The City Council may also define categories of businesses based upon the degree of benefit that each will derive from the activities to be provided within the district, and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

Section 61.2513 Establishment, Modification or Disestablishment; Districts and Benefit Zones

All provisions of this Division applicable to the establishment, modification, or disestablishment of a tourism marketing district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. In order to establish, modify, or disestablish a benefit zone or category of business, the City Council shall follow the procedure to establish, modify, or disestablish a tourism marketing district.

Section 61.2514 Expiration of Tourism Marketing District

If a tourism marketing district expires due to the time limit set pursuant to section 61.2507(h), a new district management plan may be created and a new district established pursuant to this Division.

Section 61.2515 Collection of Assessments

The collection of the assessments levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution establishing the district described in section 61.2510. A method for charging interest and penalties for delinquent payments of assessments may also be prescribed in the resolution establishing the district.

Section 61.2516 Exemptions from Assessments

The following business revenues are considered exempt from assessment under this Division:

- (1) Revenues from a transient who has exercised occupancy for more than one month;
- (2) Revenues from a transient whose room rent is being paid directly or indirectly by the federal government or the State of California, or
- (3) Revenues from a transient who is by treaty exempt from locally-levied transient occupancy taxes.

Section 61.2517 Validity of Assessments; Contests

The validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the district and levying the assessment is adopted pursuant to section 61.2510. Any appeal from a final judgment in an action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

Section 61.2518 City's Promotional Responsibilities

(a) Nothing in this Division shall relieve the City of its responsibility to promote the City of San Diego as enumerated in San Diego Municipal Code section 35.0128 regarding the use of revenues from the City's Transient Occupancy Tax.

(b) The City Manager, or the Manager's designee, will provide the tourism marketing district association, on an annual basis, a statement detailing actual Transient Occupancy Tax revenues collected under San Diego Municipal Code section 35.0103 that are available for promoting the City. This statement shall also describe the prescribed use of revenues from the City's Transient Occupancy Tax to include, but not be limited to:

(1) The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;

(2) The annual marketing subsidy as required by the San Diego Convention Center Corporation; and

(3) The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

Section 61.2519 Modifications of District Management Plan

A tourism marketing district association may, at any time, request that the City Council modify its district management plan. Any modification of the district management plan shall be made pursuant to this Division.

Section 61.2520 District Plan Modification; Public Hearing Required

(a) Upon the written request of a tourism marketing district association, the City Council may modify the district management plan, including modification of the activities to be funded with the revenue derived from the levy of the assessments, after conducting one public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the City shall comply with the notice and protest requirements of section 61.2508.

(b) The City Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

(c) The City shall give all business owners within the district written notice by mail, of the proposed modifications of the district management plan, an explanation of the modification, and the reason for the modification, together with the date, time and location of a public hearing on the proposed modification.

Section 61.2521 Tourism Marketing District Association; Report of Activities

(a) Each tourism marketing district association shall cause to be prepared a prospective report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the activities described in the report. The tourism marketing district association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the tourism marketing district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of categories of business, if a classification is used.

(b) The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the tourism marketing district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes to the boundaries of the tourism marketing district or to any

benefit zones or classification of businesses within the district.

(2) The activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this Division.

(c) The City Council may approve the report as filed by the tourism marketing district association, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of sections 61.2520. Any portion of the report which proposes to modify the district management plan shall only be approved after complying with the notice and public hearing requirements of Section 61.2520. The City Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

(d) A tourism marketing district association shall comply with the Ralph M. Brown Act, California Government Code sections 54950 -54963, at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code sections 6250 - 6276.48, for all documents relating to activities of the district.

(e) Each business owner paying the tourism district assessment has the right to vote in annual elections of the association and the right to seek nomination or election to the board of directors of the association.

Section 61.2522 Tourism Marketing District Association; Contract With Nonprofit
The district management plan may state that a tourism marketing district association will provide for and administer the activities described in the district management plan. If the district management plan designates a tourism marketing district association, the City may contract with the designated nonprofit corporation to implement the plan and carry out specified activities, subject to the terms and conditions enumerated in the contract.

Section 61.2523 Renewal of Expired District

(a) Upon renewal of an expired district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional businesses not included in the prior district, the remaining revenues shall be spent to benefit only the businesses in the prior district. If the renewed district does not include businesses included in the prior district, the remaining revenues attributable to these businesses shall be refunded to the owners of these businesses.

(b) Upon renewal, a district shall have a term not to exceed forty (40) years. There is no requirement that the boundaries, assessments, or activities of a renewed district be the same as the original or prior district.

Section 61.2524 Disestablishment of District; Procedures

(a) Any tourism marketing district established or extended pursuant to the provisions of this Division, where there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the district, may be disestablished by resolution of the City Council in either of the following circumstances:

(1) If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district; or

(2) After the first year of operation of the district, there shall be a 30-day period each year in which assessed business owners may request disestablishment of the district. The first such period shall begin upon presentation to City Council of the district's initial annual report of activities. During each successive year of operation of the district, business owners shall have such a 30-day period to request disestablishment upon presentation of the district's report of activities. Upon the written petition of the business owners in the district who pay 50 percent or more of the assessments levied, the City Council shall pass a resolution of intention to disestablish the district. The City Council shall notice a hearing on disestablishment, pursuant to section 61.2508.

(b) The City Council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the district. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each business subject to assessment in the district. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

Section 61.2525 Disestablishment; Refund of Assessments

(a) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding assessment revenue collected after disestablishment shall be spent on activities specified in the district management plan.

(b) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, shall be refunded to the business owners then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished.

Section 61.2526 Action to Determine Validity; Action Contesting Validity

(a) An action to determine the validity of assessments, contracts, improvements, or activities may be brought by the City or tourism marketing district association pursuant to Chapter 9 (commencing with section 860) of Title 10 of Part 2 of the California Code of Civil Procedure. For such purpose an assessment, activity, improvement, or acquisition shall be deemed to be in existence upon its authorization by City Council.

(b) In accordance with California Streets and Highways Code section 36633, the validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to section 61.251. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

The Property and Business Improvement District Law of 1994

California Streets and Highways Code

Section 36600. This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

Section 36601. The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or businesses in a business district are not taxes for the general benefit of a city, even if property or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature's guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

Section 36602. The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

Section 36603. Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

Section 36603.5. Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

Section 36604. This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

Section 36606. "Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.

(f) Other services provided for the purpose of conferring special benefit upon assessed businesses and real property located in the district.

Section 36606.5. "Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

Section 36607. "Business" means all types of businesses and includes financial institutions and professions.

Section 36608. "City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

Section 36609. "City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

Section 36609.4. "Clerk" means the clerk of the legislative body.

Section 36609.5. "General benefit" means, for purposes of a property-based district, any benefit that is not a "special benefit" as defined in Section 36615.5.

Section 36610. "Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.

- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

Section 36611. "Management district plan" or "plan" means a proposal as defined in Section 36622.

Section 36612. "Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

Section 36614. "Property" means real property situated within a district.

Section 36614.5. "Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

Section 36614.6. "Property-based assessment" means any assessment made pursuant to this part upon real property.

Section 36614.7. "Property-based district" means any district in which a city levies a property-based assessment.

Section 36615. "Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

Section 36615.5. "Special benefit" means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

Section 36616. "Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

Section 36617. This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

Section 36620. A property and business improvement district may be established as provided in this chapter.

Section 36620.5. A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

Section 36621. (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

Section 36622. The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from

assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

Section 36623. (a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice

and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

Section 36624. At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. (a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

Section 36626. If the city council, following the public hearing, desires to establish the proposed property and business improvement district; and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

Section 36627. Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

Section 36628. The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

Section 36628.5. The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

Section 36629. All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

Section 36630. If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

Section 36631. The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

Section 36632. (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

Section 36633. The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

Section 36634. The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

Section 36635. The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

Section 36636. (a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section

36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

Section 36637. Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

Section 36640. (a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

Section 36650. (a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement

district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

Section 36651. The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

Section 36660. (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

Section 36670. (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

Section 36671. (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

California Government Code Section 1090
Prohibitions Applicable to Specified Officers
Section 1090.

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California Government Code Sections 54951, 54952, and 54954.2

Section 54951. As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

Section 54952. As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be

delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Section 54954.2 Agenda; posting; action on other matters; posting on Internet Web site

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business

not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

San Diego City Charter Section 221: Sale of Real Property

Real property owned by The City of San Diego consisting of eighty (80) contiguous acres or more, whether or not in separate parcels, shall not be sold or exchanged unless such sale or exchange shall have first been authorized by ordinance of the Council and thereafter ratified by the electors of The City of San Diego. The foregoing shall not apply to the sale or exchange of real property to a governmental agency for bona fide governmental purposes which sale or exchange was duly authorized by ordinance of the Council, nor shall it apply to properties previously authorized for disposition by the electors of The City of San Diego.

**Jobs and Economic Improvement Through Environmental Leadership Act of 2011
California Public Resources Code**

Section 21178. The Legislature finds and declares all of the following:

(a) The overall unemployment rate in California is 12 percent, and in certain regions of the state that rate exceeds 13 percent.

(b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated.

(c) The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.

(d) There are large projects under consideration in various regions of the state that would replace old and outmoded facilities with new job-creating facilities to meet those regions' needs while also establishing new, cutting-edge environmental benefits to those regions.

(e) These projects are privately financed or financed from revenues generated from the projects themselves and do not require taxpayer financing.

(f) These projects further will generate thousands of full-time jobs during construction and thousands of additional permanent jobs once they are constructed and operating.

(g) These projects also present an unprecedented opportunity to implement nation-leading innovative measures that will significantly reduce traffic, air quality, and other significant environmental impacts, and fully mitigate the greenhouse gas emissions resulting from passenger vehicle trips attributed to the project.

(h) These pollution reductions will be the best in the nation compared to other comparable projects in the United States.

(i) The purpose of this act is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the benefits described above for a limited period of time to put people to work as soon as possible.

Section 21180. For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Applicant" means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.

(b) "Environmental leadership development project," "leadership project," or "project" means a project as described in Section 21065 that is one the following:

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED silver or better by the United States Green Building Council and, where applicable, that achieves a 10-percent greater standard for transportation efficiency than for comparable projects. These projects must be located on an infill site. For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of

clean alternative fuel vehicles.

(c) "Transportation efficiency" means the number of vehicle trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.

Section 21181. This chapter does not apply to a project if the Governor does not certify a project as an environmental leadership development project eligible for streamlining provided pursuant to this chapter prior to January 1, 2016.

Section 21182. A person proposing to construct a leadership project may apply to the Governor for certification that the leadership project is eligible for streamlining provided by this chapter. The person shall supply evidence and materials that the Governor deems necessary to make a decision on the application. Any evidence or materials shall be made available to the public at least 15 days before the Governor certifies a project pursuant to this chapter.

Section 21183. The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

(a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.

(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.

(c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(d) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.

(e) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to subdivision (f) of Section 21185.

(f) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to this division, in a form and manner specified by the lead agency for the project.

Section 21184. (a) The Governor may certify a project for streamlining pursuant to this chapter if it complies with the conditions specified in Section 21183.

(b) (1) Prior to certifying a project, the Governor shall make a determination that each of the conditions specified in Section 21183 has been met. These findings are not subject to judicial

review.

(2) (A) If the Governor determines that a leadership project is eligible for streamlining pursuant to this chapter, he or she shall submit that determination, and any supporting information, to the Joint Legislative Budget Committee for review and concurrence or nonconcurrence.

(B) Within 30 days of receiving the determination, the Joint Legislative Budget Committee shall concur or nonconcur in writing on the determination.

(C) The Joint Legislative Budget Committee fails to concur or nonconcur on a determination by the Governor within 30 days of the submittal, the leadership project is deemed to be certified.

(c) The Governor may issue guidelines regarding application and certification of projects pursuant to this chapter. Any guidelines issued pursuant to this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Section 21185. On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings pursuant to Section 21186.

Section 21186. Notwithstanding any other law, the preparation and certification of the administrative record for a leadership project certified by the Governor shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic

format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(h) The lead agency shall certify the final administrative record within five days of its approval of the project.

(i) Any dispute arising from the administrative record shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

Section 21187. Within 10 days of the Governor certifying an environmental leadership development project pursuant to this section, the lead agency shall, at the applicant's expense, issue a public notice in no less than 12-point type stating the following:

"THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW."

The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

Section 21188. The provisions of this chapter are severable. If any provision of this chapter or its application is held to be invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

Section 21189. Except as otherwise provided expressly in this chapter, nothing in this chapter affects the duty of any party to comply with this division.

Section 21189.1. If, prior to January 1, 2017, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

Section 21189.2. The Judicial Council shall report to the Legislature on or before January 1, 2017, on the effects of this chapter on the administration of justice.

Section 21189.3. This chapter shall remain in effect until January 1, 2017, and as of that date is repealed unless a later enacted statute extends or repeals that date.

California Public Resources Code Section 30103

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in

developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of the map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary up to a maximum of 100 yards except as otherwise provided in this subdivision, or the minimum distance seaward necessary up to a maximum of 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features. Where a landward adjustment is requested by the local government and agreed to by the property owner, the maximum distance shall be 200 yards.

California Public Resources Code Section 21065

"Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

San Diego City Charter Section 6: Qualified Electors

The qualifications of an elector at any election held in the City under the provisions of this Charter shall be the same as those prescribed by the general law of the State for the qualification of electors at General State Elections. No person shall be eligible to vote at such City election until he has conformed to the general State law governing the registration of voters.

San Diego City Charter Section 211: Oath of Office

Every officer or member of a Committee, Board or of a Commission of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State to be filed and kept in the office of the City Clerk.

San Diego Municipal Code Section 112.0502: Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held, and a Process One decision may not be appealed except as otherwise set forth in Section 141.0418.

RECEIVED
CLERK'S OFFICE

15 NOV -5 AM 9:53

A statement of reasons for the proposed action as contemplated in said petition is as follows:

STATEMENT OF REASONS

Our connection to the Pacific Ocean and its beaches, bays, harbors, rivers and tributaries, and our tourism and entertainment resources, are big parts of San Diego's identity. Critically important to our economy and quality of life, these resources require responsible management in order to accommodate visitors and residents who demand access to our waterways, beautiful, first-class venues, and very best of experiences.

Tourism and entertainment both benefit from, and impact, San Diego's infrastructure and facilities, and the health of each is inextricably linked.

But our tourism- and entertainment-related facilities and infrastructure have deteriorated and are failing from lack of vision and years of neglect. This is the result of there being no single, coordinated mechanism to responsibly manage these public resources.

Our City's transient occupancy tax is far below its competitive market average for comparable major tourist destinations, contributing to a roughly \$1.7 billion facilities and infrastructure deficit throughout the City.

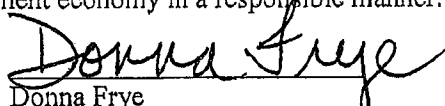
When businesses and visitors pay their fair share to maintain public assets, everyone benefits.

A recent report found that some competing cities' lodging taxes are much higher than the City's rate: Anaheim 17%, Seattle 16.5%, San Francisco 16.25%, and Los Angeles 15.5%. San Diego's transient occupancy tax is 10.5%, which results in delayed repairs, less maintenance, the postponing of new attractions and venues, and the loss of world admiration. We cannot allow that to continue.

Along with fair-share funding, we also need a better approach to oversight of these issues, and our valuable tourism- and entertainment-related resources, so our problems do not repeat themselves.

Requiring tourists and tourism businesses to pay their fair share, and reforming the City's overall management of its tourism- and entertainment-related resources, is a sensible, unified way to manage our tourism and entertainment economy in a responsible manner.

Date: October 26, 2015


Donna Frye

Mailing Address: 814 Morena Boulevard
San Diego, CA 92110

Passed by the Council of The City of San Diego on JUL 18 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 18 2016.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUL 18 2016, said ordinance being of the kind and character authorized for passage on its introduction by Sections 275(c), 295(b) and 295(d) of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20693