

RESOLUTION NUMBER R- 310731DATE OF FINAL PASSAGE NOV 01 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE UPDATED FISCAL
YEAR 2017 – PART I REPORT OF ACTIVITIES AND
THE FISCAL YEAR 2017 – PART II REPORT OF
ACTIVITIES FOR THE TOURISM MARKETING
DISTRICT, AUTHORIZING THE RELATED
EXPENDITURE OF FUNDS, AND AUTHORIZING THE
EXECUTION OF A NEW FIVE-YEAR TOURISM
MARKETING DISTRICT OPERATING AGREEMENT.

WHEREAS, on November 26, 2012, in Resolution No. R-307843, the City Council renewed the San Diego Tourism Marketing District (TMD) for a period of thirty-nine and one-half (39 ½) years commencing January 1, 2013 (Resolution of Formation); and

WHEREAS, on or about December 19, 2012, petitioners Melvin Shapiro and San Diegans for Open Government initiated separate lawsuits in San Diego Superior Court challenging the validity of the TMD and associated assessment, styled *Shapiro v. City of San Diego et al.*, Case No. 37-2012-00087765-CU-MC-CTL, and *San Diegans for Open Government v. City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL, and on February 25, 2013, Brigitte Browning, Sergio Gonzales, and UNITE HERE Local 30 filed a similar lawsuit styled *Browning et al. v. San Diego City Council*, Case No. 37-2013-00036413-CU-WM-CTL, and other similar lawsuits could be filed (collectively, the Initial District Litigation); and

WHEREAS, the City Council approved an initial five-year operating agreement with the San Diego Tourism Marketing District Corporation (TMD Corporation) in Resolution No. R-308062, effective March 26, 2013 and with a term ending November 25, 2017 (Initial Operating Agreement), a First Amendment to the Initial Operating Agreement in Resolution No. R-308065, effective April 23, 2013 (First Amendment), and a Second Amendment to the Initial

Operating Agreement in Resolution No. R-308588, effective December 9, 2013 (Second Amendment); and

WHEREAS, in May 2016, the City Council received and approved the FY 2017 Report of Activities for the TMD and approved a Third Amendment to the Initial Operating Agreement in Resolution No. R-310482, effective June 1, 2016; and

WHEREAS, since the time that the City Council approved the FY 2017 Report of Activities, the City Council has approved a modification of the TMD and Management Plan effective September 1, 2016, eliminating lodging businesses with fewer than 70 rooms from the TMD and the assessment; and

WHEREAS, the remaining TMD lodging businesses with 70 rooms or more continue to be assessed at two percent (2%) in total of assessable rent; and

WHEREAS, given the modification to assessed businesses and slightly lower anticipated assessments, the TMD Corporation has submitted an updated budget for FY 2017 broken into Part I and Part II.; and

WHEREAS, the proposed FY 2017 Report of Activities – Part I, covers the use of the assessments levied and available for expenditure from July 1, 2016 through October 31, 2016, and reflects updated revenue and expenditure estimates and anticipated reserves; and

WHEREAS, the proposed FY 2017 Report of Activities – Part II, covers the use of the assessments levied and available for the remainder of the fiscal year under the modified TMD and Management Plan; and

WHEREAS, the last remaining lawsuit from the Initial District Litigation has been dismissed but a new lawsuit challenging the District was filed on September 1, 2016, styled

California Taxpayers Action Network v. City of San Diego et al., Case No. 37-2016-00030603-CU-MC-CTL; and

WHEREAS, the City and the TMD Corporation now desire to enter into a new five-year operating agreement to address the modification to the TMD, a copy of which is attached as Document No. RR- 310731 and included in the backup materials for the City Council agenda item adopting this Resolution (New Operating Agreement); and

WHEREAS, the Initial Operating Agreement will be terminated upon the New Operating Agreement becoming effective; and

WHEREAS, approximately \$41,047,270 of TMD assessments, interest, and fund balance is projected to be available during the period of July 1, 2016 through October 31, 2016 (FY 2017 – Part I) and approximately \$24,482,826 of TMD assessments, interest, and fund balance is projected to be available during the period of November 1, 2016 through June 30, 2017 (FY 2017 – Part II); NOW, THEREFORE,

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

1. The updated FY 2017 – Part I Report of Activities for the renewed TMD is approved with an anticipated budget of \$41,047,270 that reflects updated revenue and expenditure estimates and anticipated reserves in order to close out the current activities. The Chief Financial Officer is authorized to appropriate and expend TMD assessments, interest, and fund balance, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.
2. The updated FY 2017 – Part II Report of Activities for the TMD is approved with an anticipated budget of \$24,482,826 anticipated to be available from TMD Assessments, interest, and fund balance which will be matched with estimated non-TMD assessment funds

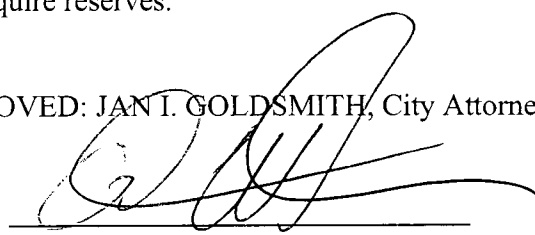
of \$15,026,557 is approved. The Chief Financial Officer is authorized to appropriate and expend TMD assessments, interest, and fund balance, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

3. The Mayor or his designee is authorized to execute the new five-year operating agreement with the San Diego Tourism Marketing District Corporation for administration of the TMD with a term of November 1, 2016 through October 31, 2021, a copy of which is on file with the Office of the City Clerk as Document No. RR - 310731 (New Operating Agreement). The existing Initial Operating Agreement (with amendments) shall terminate upon the effective date of the New Operating Agreement.

4. The Chief Financial Officer is authorized to appropriate and expend the TMD Fund Balance and TMD Interest Fund Balance from FY 2016 at year end closing (less the estimated TMD assessments and TMD interest carryover included with the FY 2017 – Part I budget) for FY 2016 expenditures anticipated to be processed in FY 2017. Such appropriation and expenditure is contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury and subject to any require reserves.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Adam R. Wander
Deputy City Attorney

ARW:mcm
October 20, 2016
Or.Dept: Econ. Dev.
Doc. No.: 1377735

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 24 2016.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10/31/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on OCT 24 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 01 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

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

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

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 310731