

RESOLUTION NUMBER R- 310808

DATE OF FINAL PASSAGE DEC 16 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO RESCINDING ITS ACTION ON OCTOBER 18, 2016, TO RECONSIDER ITEM 331 REGARDING INTRODUCTION OF ORDINANCE O-2017-30 AUTHORIZING EXECUTION OF AN OPERATING AGREEMENT AND O-2017-31 AUTHORIZING EXECUTION OF AN AGENCY AGREEMENT, EACH BETWEEN THE CITY OF SAN DIEGO AND CIVIC SAN DIEGO

WHEREAS, at its meeting on October 18, 2016, the Council of the City of San Diego (Council) considered Item 331 for the introduction of ordinance number O-2017-30 authorizing execution of an Operating Agreement and ordinance number O-2017-31 authorizing execution of an Agency Agreement; and

WHEREAS, Item 331 was noticed on the agenda as a matter requiring six votes under San Diego Charter section 99 because each proposed agreement was for a term of more than five years; and

WHEREAS, the Council voted 5 to 4 to introduce the ordinances, which vote was registered as failed; and

WHEREAS, thereafter the Council voted 6 to 3 to reconsider the matter, and then voted 5 to 4 to introduce the ordinances with a 5-year limit on the term of each agreement, and requesting the City Attorney review and report back on additional language, which vote was registered as passed; and

WHEREAS, at its November 14 meeting, the Council voted 5 to 4 to adopt Ordinances O-2017-30 and O-2017-31, as revised with a 5-year limit on the term of each agreement, which vote was registered as passed; and

WHEREAS, on November 16, 2016, the City received a letter from attorney Cory Briggs on behalf of his clients alleging that violations of the Ralph M. Brown Act (California Government Code sections 54950 *et seq.*) (Brown Act) occurred at the October 18 meeting prior to consideration of the motion for reconsideration, and requesting cure or correction of those violations by rescission of the action to reconsider Item 331 on October 18, and the Council's subsequent actions on the matter (Briggs Letter); and

WHEREAS, California Government Code section 54960.1 gives a legislative body the opportunity to cure or correct a challenged action within 30 days of receipt of the letter demanding a cure, and such action taken by the legislative body is not admissible as evidence of a violation of the Brown Act; and

WHEREAS, to minimize the risk associated with the Briggs Letter and avoid unnecessary litigation, the Council desires to cure the alleged Brown Act violations, if any, by rescinding its October 18 action to reconsider Item 331, thereby reverting to the first vote on Item 331 for the introduction of ordinance number O-2017-30 authorizing execution of an Operating Agreement and the introduction of ordinance number O-2017-31 authorizing execution of an Agency Agreement, which vote failed, meaning that the ordinances were not introduced; and

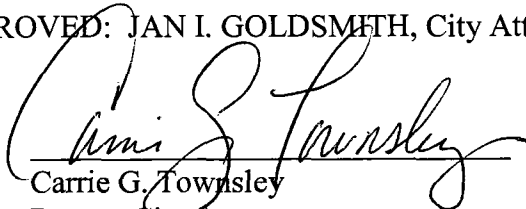
WHEREAS, rescinding the Council's action to reconsider Item 331, and reverting to the first failed vote to introduce the ordinances, means that the Council's subsequent actions to introduce and adopt the ordinances with a five-year limit are without force or effect, and means that the Council has not authorized execution of the proposed agreements; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the Council rescinds its action taken on October 18, 2016, to reconsider Item 331 for the introduction of ordinance number O-2017-30 authorizing execution of an Operating Agreement and ordinance number O-2017-31 authorizing execution of an Agency Agreement; and

BE IT FURTHER RESOLVED, that the Council acknowledges that rescinding its action to reconsider Item 331 means that the Council's subsequent actions to introduce and adopt the ordinances with a five-year limit are without force or effect.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

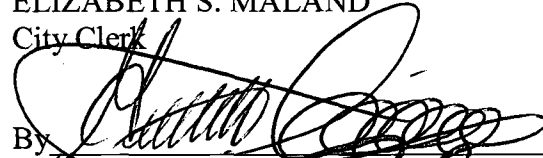

Carrie G. Townsley
Deputy City Attorney

CGT:jdf
11/30/16
Or.Dept: Mayor
Doc. No.: 1398700

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 02 2016.

ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved:

12/14/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 02 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 16 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.

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

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