

Item 333 - June 13th 2017
(R-2017-609)
Cor. Copy

RESOLUTION NUMBER R- 311182

DATE OF FINAL PASSAGE JUN 15 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE FISCAL YEAR 2018
REPORT OF ACTIVITIES FOR THE TOURISM
MARKETING DISTRICT, AUTHORIZING THE
RELATED EXPENDITURE OF FUNDS, AND
AUTHORIZING THE EXECUTION OF A FIRST
AMENDMENT TO THE TMD 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 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

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 (Initial Operating Agreement), a First Amendment to the Initial Operating Agreement in Resolution No. R-308065, effective April 23, 2013 (First

Amendment), a Second Amendment to the Initial Operating Agreement in Resolution No. R-308588, effective December 9, 2013 (Second Amendment), and a Third amendment to the Initial Operating Agreement in Resolution No. R-310482, effective June 1, 2016 (Third Amendment); and

WHEREAS, the Second Amendment, among other things, rescinded the First Amendment in its entirety and established a plan for the incremental release and withholding of TMD assessment funds pursuant to a District Reserve and Withholding Schedule, which was attached as Attachment 1 to the Second Amendment; and

WHEREAS, the Third Amendment, among other things, slightly modified the District Reserve and Withholding Schedule, which was attached as Attachment 1 to the Third Amendment; and

WHEREAS, the City Council approved a new five-year operating agreement with the San Diego Tourism Marketing District Corporation in Resolution No. R-310731, effective November 1, 2017 (Operating Agreement) that includes an Exhibit D – “District Litigation Reserve and Withholding Schedule” with the requirement for a total reserve amount of \$29,000,000 in Fiscal Year 2017; and

WHEREAS, the goal of the District Reserve and Withholding Schedule is to balance the City’s interest in funding TMD activities which help generate Transient Occupancy Tax and sales tax revenue against the City’s need to build and retain appropriate reserves over the next few years in the event of adverse legal outcomes arising from litigation challenging the District; and

WHEREAS, the last remaining lawsuit from the initial three lawsuits has been dismissed but new lawsuits challenging the District have been filed, styled *California Taxpayers Action Network v. City of San Diego et al.*, Case No. 37-2016-00030603-CU-MC-CTL and *Reid et al v. City of San Diego*, Case No. 37-2016-00041207-CU-MC-CTL; and

WHEREAS, effective September 1, 2016, the City Council approved a modification of the TMD and Management Plan, 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, Section 4.2.1.1 of the Operating Agreement requires that prior to disbursement, TMD assessment funds must be part of a City Council approved TMD budget; and

WHEREAS, \$40,074,576 of available TMD assessment funds, including interest and fund balance is projected to be available during the period of July 1, 2017 through June 30, 2018 (FY 2018); and

WHEREAS, pursuant to section 61.2521 of the San Diego Municipal Code, the TMD Corporation has prepared a prospective report (Report of Activities) including a budget based on that projected \$40,074,576 for FY 2018; and

WHEREAS, the \$40,074,576 of available TMD assessment funds does not include the required \$29,000,000 of reserves held by the City pursuant to the Operating Agreement in the event of adverse legal outcomes; NOW, THEREFORE,

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

1. The FY 2018 Report of Activities for the San Diego Tourism Marketing District is approved with an anticipated budget total of \$40,074,576. This budget figure includes anticipated TMD assessments for FY 2018 of \$36,855,968, projected carryover of \$3,058,608 from FY 2017, and projected TMD interest and penalties to be accrued in FY 2018 of \$160,000. The FY 2018 Report of Activities is on file in the office of the City Clerk as Document No. RR-311182.

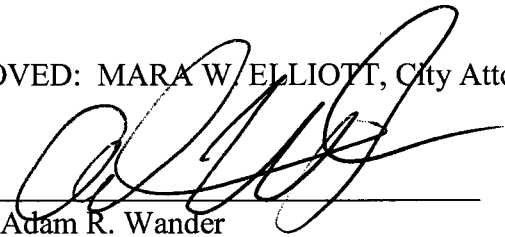
2. The Chief Financial Officer is authorized to appropriate and expend for FY 2018 TMD activities a total of \$40,074,576, which includes anticipated TMD assessments for FY 2018 of \$36,855,968, projected carryover of \$3,058,608 from FY 2017, and projected TMD interest and penalties to be accrued in FY 2018 of \$160,000. 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 the reserves requirement of the Operating Agreement.

3. The FY2018 supplemental request of \$3,000,000 from prior year Litigation Reserve is approved for additional marketing and promotional activities and the Mayor or designee is authorized to execute a First Amendment to the Operating Agreement to effectuate this request.

4. The Chief Financial Officer is authorized to appropriate and expend for FY2018 supplemental TMD activities a total of \$3,000,000 from the Litigation Reserve contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

5. The Chief Financial Officer is authorized to appropriate and expend the TMD Fund Balance and TMD Interest Fund Balance from FY 2017 at year end closing (less the estimated TMD assessments and TMD interest carryover of \$3,058,608 to be included with the FY 2018 budget) for FY 2017 expenditures consistent with the approved FY 2017 Report of Activities anticipated to be processed in FY 2018. 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 the reserves requirement of the Operating Agreement.



APPROVED: MARA W. ELLIOTT, City Attorney

By 
Adam R. Wander
Deputy City Attorney

ARW:mm
05/24/2017
06/08/2017 – Cor. Copy
Or. Dept: Econ. Devel.
Doc. #1519672

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 13 2017

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

KEVIN L. FAULCONER, Mayor

Approved: 6/15/17
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 13 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<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"/>
Chris Ward	<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"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 15 2017

(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:

(Seal)

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

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

By Sty Crady, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 311182