

RESOLUTION NUMBER R- 313345

DATE OF FINAL PASSAGE NOV 24 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AN AMENDMENT TO THE FISCAL YEAR 2021 REPORT OF ACTIVITIES FOR THE TOURISM MARKETING DISTRICT AND AUTHORIZING THE RELATED EXPENDITURE OF FUNDS.

WHEREAS, on November 26, 2012, in Resolution R-307843, the City Council of the City of San Diego (City Council) renewed the San Diego Tourism Marketing District (TMD) for a period of thirty-nine and one-half (39 1/2) 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 (SDOG Case), 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, in 2016, new lawsuits challenging the TMD were filed, styled *California Taxpayers Action Network v. City of San Diego et al.*, Case No. 37-2016-00030603-CU-MC-CTL (CTAN Case) and *Reid et al v. City of San Diego*, Case No. 37-2016-00041207-CU-MC-CTL (Reid Case); and

WHEREAS, the City Council approved a five-year operating agreement between the City and the TMD Corporation in Resolution R-310731, effective November 1, 2016 (Operating Agreement); and

WHEREAS, the Operating Agreement carried forward a preexisting plan for the incremental release and withholding of TMD assessment funds pursuant to a District Reserve and Withholding Schedule (Litigation Reserve) and established a total Litigation Reserve amount of \$30,000,000 by the end of Fiscal Year 2018; and

WHEREAS, the goal of the Litigation Reserve 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 in the event of adverse legal outcomes arising from litigation challenging the TMD; and

WHEREAS, the City Council approved amendments to the Operating Agreement in Fiscal Years 2018, 2019 and 2020, authorizing expenditures from the Litigation Reserve; and

WHEREAS, pursuant to the Operating Agreement, the TMD Corporation prepared an annual prospective report and budget required by San Diego Municipal Code section 61.2521 (Report of Activities) based on an anticipated budget of \$38,525,695 in TMD funds for FY 2021, which includes the projected TMD assessments in FY 2021, an allocation from the Litigation Reserve, interest and penalties, carryover of budgeted funds remaining from previous years, and other carryover funds; and

WHEREAS, the Litigation Reserve is estimated to be \$5,361,540 at the end of FY 2021; and

WHEREAS, there is no longer any outstanding litigation challenging the TMD; and

WHEREAS, effective June 11, 2020, the City Council adopted Resolution No. R-313083, approving the Report of Activities; and

WHEREAS, effective June 24, 2020, the City Council adopted Ordinance O-21202, approving a new ten-year operating agreement between the City and the TMD Corporation (New Operating Agreement); and

WHEREAS, the New Operating Agreement no longer requires a Litigation Reserve; and

WHEREAS, City Council directed the TMD Corporation to prepare an update to the Report of Activities for FY 2021 (Amendment), which, among other things, reflects an appropriation of the remaining balance of the Litigation Reserve to increase the TMD Opportunity/ Catastrophe Fund for funding future competitive applications; and

WHEREAS, the anticipated TMD expenditures will be increased from the balance of the Litigation Reserve by \$5,361,540 but also decreased by \$8,027,435 due to the reduction in projected assessments in FY 2021, resulting in a revised anticipated budget of \$35,859,800;

NOW, THEREFORE,

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

1. The Amendment to the Report of Activities, which adds \$5,361,540 in Litigation Reserve funds to the Opportunity/Catastrophe Reserve allocation and decreases projected assessments by \$8,027,435 resulting in a revised anticipated budget total of \$35,859,800, is approved.

2. The Chief Financial Officer is authorized and directed to appropriate and expend from the Tourism Marketing District Fund No. 200704, in an amount not to exceed \$4,941,759, and from the Tourism Marketing District Fund No. 200705 an amount not to exceed \$419,781 of prior Litigation Reserve funds, contingent upon the Chief Financial

Officer first certifying that the funds necessary for expenditure are available.

3. The Chief Financial Officer is authorized and directed to decrease the Tourism Marketing District Fund No. 200726 Budget and deappropriate an amount not to exceed \$8,027,435 from Fund No. 200726 – TMD 2% Assessment 2016.

APPROVED: MARA W. ELLIOTT, City Attorney

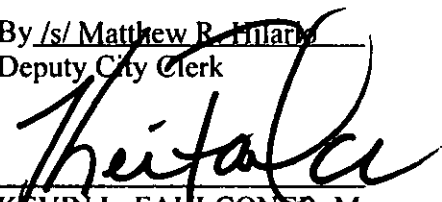
By /s/ Marguerite E. Middaugh
Marguerite E. Middaugh
Deputy City Attorney

MEM:jdf
10/27/2020
Or. Dept: Econ. Devel.
Doc.No.: 2513934

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 11/17/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Matthew R. Hilaro
Deputy City Clerk


KEVIN L. FAULCONER, Mayor

Approved: 11/23/20
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on 11/17/2020, 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"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 24 2020:

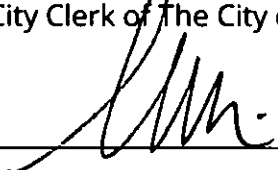
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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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