

RESOLUTION NUMBER R- 313487

DATE OF FINAL PASSAGE APR 20 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE ISSUANCE OF BONDS WITH MAXIMUM BONDED INDEBTEDNESS, INCLUDING FINANCING COSTS, IN AN AMOUNT NOT TO EXCEED \$200,000,000, FOR MODERNIZATION IMPROVEMENTS AT THE DOWNTOWN SAN DIEGO CONVENTION CENTER IN ACCORDANCE WITH A VOTER-APPROVED CITIZENS' INITIATIVE MEASURE KNOWN AS MEASURE C, AND APPROVING RELATED ACTIONS.

WHEREAS, during the municipal special election held on March 3, 2020, 65.24 percent of local voters supported a citizens' initiative measure known as Measure C; and

WHEREAS, concurrently with the adoption of this Resolution, the Council has adopted a resolution determining that Measure C has been approved by local voters; and

WHEREAS, Measure C adds a new Division 2 entitled "Additional, Voter-Approved Transient Occupancy Tax and Related Bonds," including sections 35.0201 through 35.0212, to Chapter 3, Article 5 of the San Diego Municipal Code (Municipal Code), and also contains certain uncodified provisions; and

WHEREAS, all capitalized terms in this Resolution have the same meaning ascribed to them in Municipal Code section 35.0211 or as otherwise defined or used in Measure C, unless otherwise specified in this Resolution; and

WHEREAS, Measure C confirms the intent of local voters for the City of San Diego to impose the Additional Tax, as a special tax in the form of an increase to the City's existing Transient Occupancy Tax for specified purposes, and to issue Bonds for specified purposes to be repaid using the Additional Tax Revenues; and

WHEREAS, Measure C defines Bonds to include debt instruments, taxable or tax-exempt bonds, notes, debentures, or other similar financial instruments payable from Additional Tax Revenues and authorized by the applicable Municipal Code provisions added by Measure C; and

WHEREAS, Municipal Code section 35.0201 states that the Additional Tax includes an increase to the City's existing 10.5 percent Transient Occupancy Tax (i.e., hotel visitor tax) of 1.25, 2.25, or 3.25 percentage points depending on geographical proximity of the affected lodging facilities (i.e., any Hotel, Recreational Vehicle Park, or Campground) to the Convention Center located in downtown San Diego; and

WHEREAS, Municipal Code section 35.0202(a) identifies the Additional Tax as a special tax that must be used for Special Purpose Activities, including Homelessness Programs, Street Repairs, Convention Center Improvements, Convention Center Operations, Convention Center Support Activities, and Convention Center Business Development Programs; and

WHEREAS, Municipal Code sections 35.0203(c) and 35.0204(a) generally require the Additional Tax Revenues to be allocated in specified percentages for Convention Center purposes (59 percent), Homelessness Programs (41 percent in Years 1 through 5, and 31 percent thereafter), and Street Repairs (10 percent starting in Year 6); and

WHEREAS, Municipal Code section 35.0210(a)-(f) authorizes the City to issue and sell Bonds, to be repaid using the applicable allocated component of the Additional Tax Revenues, up to specified caps of maximum bonded indebtedness, including financing costs (i.e., necessary costs of issuance to conduct a bond offering); and

WHEREAS, the specified bond-related caps include \$850 million for Convention Center Expansion and Modernization Costs (which cap may be lifted in the future by Council resolution after a noticed public hearing), \$750 million for Homelessness Program Costs, and \$400 million

for Street Repair Costs, provided in each instance that the allocated revenues from the applicable Additional Tax Component are projected over the life of the pertinent Bonds to be sufficient to repay the amount of such Bonds; and

WHEREAS, Municipal Code section 35.0210(g) states that all Bonds issued pursuant to Measure C shall be limited obligations of the City payable solely from the Additional Tax Revenues attributable to the pertinent Additional Tax Component; and

WHEREAS, Municipal Code section 35.0201(b) generally states that the Additional Tax is effective for 42 consecutive years from the final calendar day of the month in which the City issues the Convention Center Long-Term Expansion Bonds, which are defined as long-term Bonds for Convention Center Improvements, including the contiguous expansion of the Convention Center as well as any additional capital improvements to modernize the Convention Center; and

WHEREAS, Municipal Code section 35.0201(b) further states that, if no Convention Center Long-Term Expansion Bonds have been issued within 10 years after the date of imposition of the Additional Tax, then the Additional Tax will cease 10 years after the date of imposition except to the extent necessary to fund the City's repayment of any Bonds issued earlier under Measure C to carry out Convention Center Improvements, Homelessness Programs, or Street Repairs; and

WHEREAS, Municipal Code section 35.0210(j) states that all Bonds authorized by Measure C shall be issued and shall mature at such time or times not to exceed 40 years, and shall bear interest at such fixed or variable rate or rates approved by the Council, but not to exceed the maximum rate permitted by law; and

WHEREAS, to effectuate the intent of voters in approving Measure C, the City desires to issue and sell Bonds with maximum bonded indebtedness, including financing costs, in an amount not to exceed \$200,000,000, to provide a source of funds to finance capital improvements intended to modernize the Convention Center and pay all related Convention Center Expansion and Modernization Costs (Convention Center Modernization Bonds) in accordance with the annual budgets for the use of funds in the Convention Center Revenue Account to be developed in the future and approved by the Council in accordance with Municipal Code section 35.0206(a)-(b); and

WHEREAS, the City is authorized to undertake the actions described in this Resolution pursuant to Measure C (including Municipal Code section 35.0210(c), which authorizes the issuance of Bonds to fund Convention Center Expansion and Modernization Costs), the San Diego Charter (Charter), and applicable laws of the State of California; and

WHEREAS, Charter section 90.1 enables the Council to authorize the issuance of revenue bonds by a two-thirds vote of the Council if the bonds are secured by and payable from an enterprise fund, not the City's General Fund or any other City fund including a special fund, and if the bonds are issued for the construction, reconstruction, or replacement of water facilities, wastewater facilities, or stormwater facilities; and

WHEREAS, Municipal Code section 35.0210(k) confirms the intent of voters, in approving Measure C, to approve the Bonds authorized by Measure C and explains that Charter section 90.1 applies only to the Council or other City officials, not to the voters exercising their initiative power through a citizens' initiative such as Measure C; and

WHEREAS, Charter section 99, which is patterned after article XVI, section 18 of the California Constitution, sets forth an annual debt limitation provision and states, in pertinent

part: "The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same"; and

WHEREAS, the courts have established several recognized exceptions to the annual debt limitation provision in the California Constitution, and those court-recognized exceptions apply equally to Charter section 99; and

WHEREAS, one of the court-recognized exceptions to the annual debt limitation provision is the special fund doctrine, under which a "debt" does not exist for purposes of the annual debt limitation provision if a city's financial obligation is payable only from a special fund and not from the city's general fund or any general tax levies; and

WHEREAS, the provisions in Measure C authorizing issuance of the Bonds comply with Charter section 99 in that: (1) in light of the special fund doctrine, the Bonds do not constitute "debt" for purposes of the annual debt limitation provision and, therefore, do not require local voter approval; and (2) at the time the Bonds are issued, they will be secured by the collection of the Additional Tax in an amount sufficient to pay the Bonds and the interest thereon as it becomes due; and

WHEREAS, the City expects to expend moneys (other than moneys derived from the issuance of the Convention Center Modernization Bonds) on capital expenditures relating to

modernization of the Convention Center prior to issuance of the Convention Center Modernization Bonds, which expenditures will be properly chargeable to a capital account under general federal income tax principles; and

WHEREAS, the City reasonably expects to reimburse certain of such capital expenditures with tax-exempt bond proceeds of the Convention Center Modernization Bonds; and

WHEREAS, at the time of the reimbursement, the City will evidence the reimbursement in a writing which identifies the allocation of the proceeds of the Convention Center Modernization Bonds to the City for the purpose of reimbursing the City for any of the capital expenditures made prior to the issuance of the Convention Center Modernization Bonds; and

WHEREAS, the City expects to make the reimbursement allocation no later than eighteen (18) months after the later of (i) the date on which the earliest original expenditure is paid or (ii) the date on which any capital improvements are placed in service, but in no event later than three (3) years after the date on which the earliest original expenditure is paid; and

WHEREAS, the City will not, within one (1) year of the reimbursement allocation, use the proceeds of the Convention Center Modernization Bonds received in the reimbursement allocation in a manner that will result in the creation of replacement proceeds of the Convention Center Modernization Bonds or another issue (e.g., the City will not pledge or use the proceeds received for the payment of debt service on the Convention Center Modernization Bonds or another issue, except that the proceeds of the Convention Center Modernization Bonds can be deposited in a bona fide debt service fund to the extent permitted by Measure C); and

WHEREAS, this Resolution is intended to be a “declaration of official intent” (Declaration of Intent) in accordance with section 1.150-2 of the United States Treasury Regulations; NOW, THEREFORE,

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

1. The Council finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.
2. Consistent with the intent of the voters in approving Measure C, the Council authorizes and approves the issuance and sale of the Convention Center Modernization Bonds with maximum bonded indebtedness, including financing costs, in an amount not to exceed Two Hundred Million Dollars (\$200,000,000), with a maximum maturity of not-to-exceed 40 years and bearing interest at a rate or rates not to exceed the maximum rate permitted by law. Upon their issuance, the Convention Center Modernization Bonds shall be valid and binding limited obligations of the City. The City shall repay all principal and interest on the Convention Center Modernization Bonds solely from the portion of Additional Tax Revenues that is generated by the levy and collection of the Additional Tax and deposited in the Convention Center Revenue Account, and the Council pledges such portion of Additional Tax Revenues for the repayment of the Convention Center Modernization Bonds. The City shall issue the Convention Center Modernization Bonds no earlier than the date on which the City first causes the Additional Tax to be levied on Transients in accordance with Measure C.
3. The Chief Financial Officer is authorized and directed to coordinate the preparation of bond indenture and related documents, for the Council’s future approval, governing the issuance and sale of the Convention Center Modernization Bonds on terms and conditions consistent with this Resolution.

4. Nothing in this Resolution shall constitute the approval of a specific project or a commitment to proceed with a specific project, given that the proceeds of the Convention Center Modernization Bonds will be used to implement capital improvements intended to modernize the Convention Center in accordance with the annual budgets for the use of funds in the Convention Center Revenue Account to be developed in the future and approved by the Council in accordance with Municipal Code section 35.0206(a)-(b).

5. The Declaration of Intent is made solely for the purpose of establishing compliance with section 1.150-2 of the United States Treasury Regulations, and in accordance therewith, the City declares its intention to incur obligations under the Convention Center Modernization Bonds, the tax-exempt proceeds of which will be used to pay the costs of capital improvements intended to modernize the Convention Center (and related bond issuance costs, if any), including the reimbursement to the City for certain capital expenditures relating to modernization of the Convention Center made prior to issuance of the Convention Center Modernization Bonds. This Declaration of Intent does not bind the City to make any expenditure, incur any indebtedness, or initiate any capital improvements intended to modernize the Convention Center.

6. No proceeds of the Convention Center Modernization Bonds shall be used to pay any costs associated with the physical expansion of the Convention Center.



7. The Council authorizes the City's filing of an action pursuant to California Code of Civil Procedure section 860, *et seq.* to validate the issuance of the Convention Center Modernization Bonds and the validity of the Additional Tax in accordance with the provisions of this Resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By     /s/ Kevin Reisch      
Kevin Reisch  
Senior Chief Deputy City Attorney

KJR:jdf  
03/26/21  
Or. Dept: Mayor  
Doc. No. 2504175\_3  
Comp. R-2021-381 and R-2021-382

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of     04/06/2021    .

ELIZABETH S. MALAND  
City Clerk

By     /s/ Matthew R. Hilario      
Deputy City Clerk

Approved:     4/20/21      
(date)

  
TODD GLORIA Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 06 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 20 2021

**(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:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

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

By Connie Patterson, Deputy  
for Matthew Hilario

Office of the City Clerk, San Diego, California

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