

BUDGET & FINANCE COMMITTEE MEETING OF OCTOBER 19, 2011 INFORMATION ONLY

SAN DIEGO TOURISM MARKETING DISTRICT DISTRICT MANAGEMENT PLAN

*Formed pursuant to the San Diego City Tourism Marketing District Procedural Ordinance
(City of San Diego Municipal Code §61.2501 et seq.)*

Submitted to the

San Diego Tourism Marketing District and
the City of San Diego

October 13, 2011
by



SAN DIEGO TOURISM MARKETING DISTRICT DISTRICT MANAGEMENT PLAN

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I. HISTORY AND OVERVIEW

As a result of diminishing public resources available for effective and competitive destination marketing, local lodging industry leadership began discussing alternative funding sources in 2004. A working group comprised of lodging industry representatives was assembled and meetings were held with proposed assessed businesses, stakeholder groups and interested parties. On May 8, 2007 the San Diego City Council (Council) adopted an enabling procedural ordinance that allowed creation of a Tourism Marketing District. Subsequently, on August 1, 2011, the Council adopted amendments to the procedural ordinance which specifies, among other things, the process by which a Tourism Marketing District may be renewed. The amendments allowed for a Tourism Marketing District to be established or renewed for a period of up to forty (40) years. In this case it is proposed to renew the San Diego Tourism Marketing District (SDTMD) for a period of thirty-nine and one-half (39.5) additional years.

Developed by San Diego lodging businesses, the SDTMD is a benefit assessment district created to help fund marketing and sales promotion efforts for San Diego lodging businesses of 30 rooms or more. This approach has been used successfully in San Diego and other destination areas throughout the country to improve tourism and drive additional room night sales. Herein, representatives of the San Diego lodging industry have taken steps to formalize an updated and revised District Management Plan to gain industry support to renew the SDTMD.

District: The boundaries of the SDTMD coincide with the boundaries of the City of San Diego (City). Assessed businesses shall include all lodging businesses with thirty (30) or more rooms located within the SDTMD boundaries (hereinafter referred to as “business” or “lodging business”). Assessed lodging businesses are defined in Appendix 1 and listed in Appendix 3.

Activities: Marketing and sales promotions to increase tourism and market San Diego lodging businesses as tourist, meeting, and event destinations.

Budget The total SDTMD annual budget for each year of its thirty-nine and one-half year operation is anticipated to be approximately \$30,000,000.

Assessments: Annual assessment rates are 2% of gross short term room rental revenue of lodging businesses. Based on the benefit received, assessments will not be levied on revenue from stays of more than one (1) month, nor on stays by federal or state government employees or officials on government business. Assessments will be authorized by City Council to be levied for the life of the SDTMD.

Remittance: Business Owners, defined as owner, operator, or authorized representative of the business who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to San Diego Municipal Code section 35.0114, shall remit assessments monthly to the City.

Renewal: SDTMD renewal requires submittal of petitions from lodging business owners representing more than 50% of the total annual assessment followed by a City Council hearing and a ballot procedure. The assessed lodging business owners will

receive ballots by mail. If a majority of the ballots returned, when weighted by the amount of the anticipated assessment represented by returned ballots, do not favor renewal the SDTMD will not be renewed.

Duration: The renewed SDTMD will have a thirty-nine and one-half year life. The renewed SDTMD assessment will be implemented beginning January 1, 2013 through June 30, 2053. After the first year of operation of the renewed district, there shall be a 30-day period each year in which assessed business owners may request disestablishment of the SDTMD. The 30-day period shall begin each year upon presentation to the City Council of the SDTMD Report of Activities. Upon written petition of business owners paying more than 50% of the assessments levied, City Council shall pass a resolution of intention to disestablish the SDTMD.

II. INTRODUCTION

A. What is a Tourism Marketing District?

The SDTMD follows the Tourism Business Improvement District (TBID) model, which utilizes the efficiencies of private sector operation in the market-based promotion of local and regional tourism. TBIDs, such as the SDTMD, allow lodging business owners to organize their efforts to increase tourism, specifically the consumption of hotel rooms as measured by room night stays.

In San Diego, lodging business owners within the district will assess themselves to fund the SDTMD, and those funds will be used to provide programs and services that specifically benefit the assessed lodging businesses.

San Diego Tourism Marketing District funded programs and services may include, but are not limited to:

- Marketing of the Assessed Businesses
- Tourism Promotion Activities
- Special Events and Programs

In California TBIDs such as the SDTMD are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law), the Parking and Business Improvement District Law of 1989 (BID Law), or by ordinance of a Charter City. The local lodging businesses have asked the City to modify the enabling (procedural) ordinance modeled on the 1994 PBID Law. This State statute and the City ordinance allow creation of a special benefit assessment district to raise funds within a specific geographic area, in this case the City of San Diego, for the purpose of promoting tourism and improving room occupancy.

There are many benefits to Tourism Marketing Districts:

- Funds must be spent to specifically benefit only those who pay;
- Funds cannot be diverted for other government programs;
- Tourism Marketing Districts are customized to fit the needs of businesses in each tourism district;
- They allow for a wide range of services;
- Tourism Marketing Districts require petition support from lodging businesses paying over 50% of the annual proposed assessment (1994 PBID Law);
- Tourism Marketing Districts are *designed, created and governed by those who will pay* the assessment; and
- They provide a stable funding source for tourism promotion.

B. Transparent Governance Provides Mission Specific Results and Accountability

The SDTMD Corporation (“Corporation”) acts as the owners’ association for the district pursuant to Streets and Highways Code section 36614.5. The Corporation’s Board of Directors is comprised exclusively of owners or owner’s representatives from lodging businesses within the District. The Corporation’s Board acts on behalf of all assessees to ensure that the mission of the District is accomplished with the greatest possible benefit to those who pay. Each year the Corporation

receives and reviews numerous vendor applications for TMD funding. Review criteria include evaluation of room night generation at assessed businesses from TMD funds.

To that end, and as shown below, over the first four years of operation the SDTMD has delivered significant incremental hotel room night stays to assessed lodging businesses (those with seventy or more rooms) in the District:

- FY08/09: Approximately 2,650,856 room nights (audited)
- FY10: Approximately 3,546,549 room nights (audited)
- FY11: Approximately 3,112,074 room nights (pending audit)

TOTAL: 9,309,479 room nights

TMD revenues are used to exclusively drive incremental room night stays to assessees within the District. While all vendors are required to have additional revenue from non-TMD sources to support a portion of their programming, through a rigorous application process and subsequent follow-up audits it has been determined that programs receiving funding, including Holiday Bowl, Crew Classic, Wine & Food Festival, and Rock & Roll Marathon, have delivered 100% of their funded room night production to hotels within the District. Subsequently, the minimal room nights that may occasionally accrue to lodging establishments outside the District as a result of TMD funded marketing and programs are the direct result of expenditures made with non-TMD revenues.

Not all applicants for SDTMD funding are successful in receiving an allocation. While many worthy organizations request funding, the partial list below includes organizations that could not demonstrate on their original application or did not demonstrate on a renewal application that they could meet or did meet the minimum production of hotel room nights.

<u>Funding Year</u>	<u>Organization</u>	<u>Requested Amount</u>
FY12	SD Film Commission	\$530,000
FY 11	SD County Bike the Bay	\$5,000
FY11	Century Club of SD	\$250,000
FY11	Citizen Diplomacy Council	\$24,000
FY11	Pazzo Entertainment	\$500,000
FY10	Armed Services YMCA Fireworks	\$106,336
FY10	La Jolla Marketing Alliance, Inc.	\$1,048,050
FY10	Travelers Aid Society of SD	\$60,000
FY 10	SD Asian Film Foundation	\$40,000
FY10	SD International Auto Show	\$206,000
FY10	SD Film Foundation / Festival	\$25,000

By mutual agreement of the Boards of Directors of the SDTMD Corporation and the San Diego North Convention & Visitors Bureau, San Diego North CVB reorganized its membership in order to guarantee that no benefit from SDTMD funding was accruing to lodging businesses outside the District.

C. Programs and Services the San Diego Tourism Marketing District will NOT Fund

- The acquisition, construction, installation or maintenance of any tangible public property, including parking facilities, parks, planting areas, fountains, benches, booths,

kiosks, display cases, pedestrian shelters, signs, trash receptacles, public restrooms, ramps, sidewalks, plazas, pedestrian malls, lighting and heating of public facilities.

- The closing, opening, widening or narrowing of existing or new streets.
- Facilities or equipment, or both, to enhance security and safety of persons and property within the area, unless included in a specific proposal to benefit the assessed businesses.
- Regular public safety and security personnel and programs, maintenance and repair, sanitation, nor other municipal services normally and historically provided by the City.
- Expenditures not consistent with the terms of this District Management Plan.
- Bonds.
- Political candidate or ballot initiative activity.

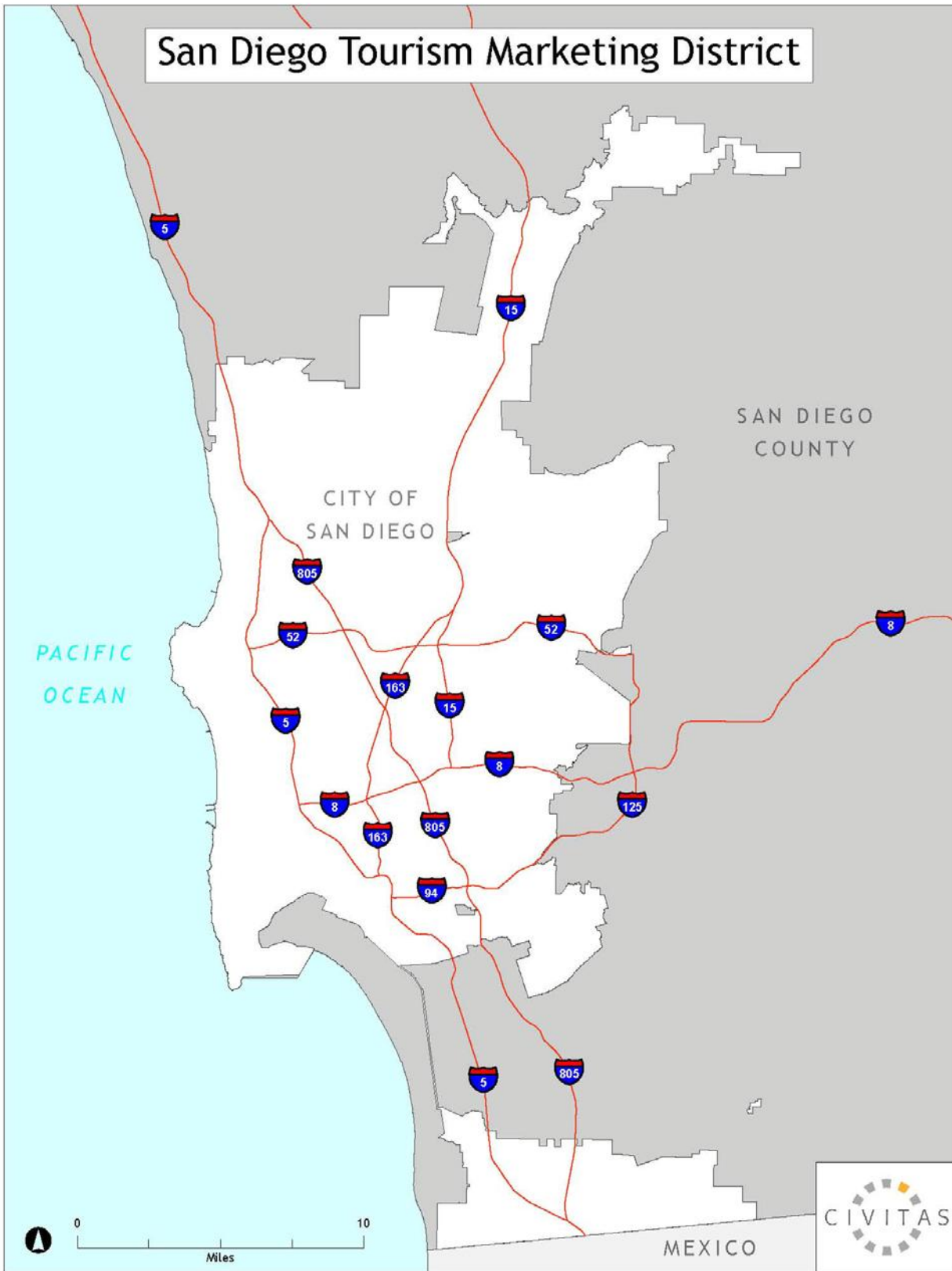
III. ASSESSED LODGING BUSINESSES & BOUNDARY

The SDTMD will include all lodging businesses (as defined in Appendix 1) with thirty (30) or more sleeping rooms, existing and in the future, available for transient public occupancy within the boundaries of the City of San Diego. The baseline test for assessment shall be the availability for transient occupancy of thirty (30) or more sleeping rooms for any one month during the City's fiscal year.

The SDTMD Boundaries coincide with the boundaries of the City of San Diego. Within the boundaries there are presently 2,467 properties or establishments identified by the County Assessor that provide accommodations for transient public occupancy. Of these 2,467 properties or establishments there are 288 hotels and motels. Of those 288 hotels, 240 have thirty (30) rooms or more, which represent ninety-two percent (92%) of the total sleeping rooms available in the City. There are forty-eight (48) hotels and motels with fewer than thirty (30) rooms, which represent less than three percent (3%) of the total rooms in the City. There are also a total of nineteen (19) youth hostels, r.v. parks, and campgrounds. Hotels with under thirty (30) rooms, youth hostels, rv parks, and campgrounds primarily provide long-term residential (monthly) rentals and transitional housing of a weekly or monthly duration; or they specialize in hourly rentals, neither of which is measurably driven by tourism marketing.

There are also 2,160 Seasonal Vacation Rentals and Vacation Rental Management Companies that are comprised of single-unit structures or individual condominium units. These vacation rentals represent less than five percent (5%) of the total sleeping rooms available in the City. The rental of these properties constitutes a real estate transaction of a specific term between the owner and the renter, typically requires a residential lease and credit worthiness qualifications, and is not subject California Civil Code section 1865 regulating innkeepers.

The district boundaries are illustrated by the map on the next page. A complete listing of lodging businesses which will be assessed (those with thirty (30) or more rooms) in the District boundaries can be found on Appendix 3.



IV. SERVICE PLAN AND BUDGET

A. Assessment

The SDTMD annual assessment rate is 2% of gross room rental revenue derived from short term stays (stays less than one month) on lodging businesses with thirty (30) rooms or more.

The term “gross room rental revenue” as used herein means the total consideration charged to a transient as shown on the guest receipt for the occupancy of a room, or portion thereof, in a lodging business. Gross room rental revenue shall not include any federal, state, or local taxes collected, including but not limited to transient occupancy taxes. Any other charges shall be considered gross revenue only in accordance with the City’s Transient Occupancy Tax. Stays by any person who occupies a room, or any portion thereof, in a lodging business, or is entitled to occupancy thereof, for a period of one (1) month or more, shall be deemed not to have been a transient with respect to the first month of occupancy or entitlement to occupancy.

Based on the benefit received, assessments will not be levied on revenue from stays of more than one (1) month, per San Diego Municipal Code Section 35.0111(a)(1), nor on stays by federal or state government employees or officials on government business. For lodging businesses with seventy (70) or more rooms, assessments pursuant to the SDTMD shall not include room rental revenue resulting from stays pursuant to contracts executed prior to January 1, 2008. For lodging businesses with between thirty (30) and sixty-nine (69) rooms, assessments pursuant to the SDTMD shall not include room rental revenue resulting from stays pursuant to contracts executed prior to January 1, 2013.

The assessment is to be remitted by the owner(s), operator(s), or an authorized representative who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax for each lodging business in the City of San Diego. “Business” and “lodging business” means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes. Transient means any person who exercises occupancy, or is entitled to occupancy, by reason of concession, permit, right of access, license or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.

The assessment imposed is levied solely upon the SDTMD lodging business with the business owner being solely responsible for payment of the assessment when due. If the business owner chooses to charge any portion of the assessment to a transient, that said portion shall be separately stated from the amount of rent charged and any other applicable taxes, and identified for the transient in any and all communications from the business owner as "San Diego Tourism Marketing District Assessment."

B. Determination of Specific Benefit

State law requires that assessment funds be expended on a specific benefit conferred directly to the payees that is not provided to those not charged, and which does not exceed the reasonable cost to the City of conferring the benefit.

The specific benefit the district will provide to assessed lodging businesses, and will not provide to those not charged, is incremental room night sales. The programs and services provided with the district funds will be designed specifically to drive room night sales at assessed lodging businesses. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from district-funded activities, be featured in advertising campaigns, and benefit from other district-funded services. Those not assessed will not receive these and any other district-funded services.

Processes to identify and verify specific benefits to assessed businesses will be modeled on practices in use, or as modified, by the SDTMD Corporation in administering the initial five-year term of the SDTMD.

Funding requests for both fixed and variable categories are required to estimate:

- Number of SDTMD lodging business room nights generated – existing and incremental
- Average Daily Rate
- ROI as measured in SDTMD room night revenue
- Time of Year (peak, shoulder, low)
- Number of marketing impressions (included as supportive information only where applicable)

Successful applicants shall be required to submit quarterly performance updates and a comprehensive annual performance report which includes the above required information along with information as to the methodology used to substantiate the ROI. Funded entities or programs must also have a cost allocation methodology which identifies how costs are apportioned between applicable funding sources proportionally to the benefit derived by SDTMD lodging businesses relative to any non-SDTMD lodging businesses as applicable.

The SDTMD Corporation will contract with an independent third-party to audit the results and to verify SDTMD room nights and ROI.

C. Time and Manner for Collecting Assessments

The SDTMD assessment will be implemented beginning January 1, 2013 and will continue for thirty-nine and one-half (39.5) years. The business owner of each individual assessed lodging business with thirty (30) or more rooms located in the boundaries of the SDTMD will be responsible for remitting the assessment on a monthly basis (including any delinquencies, penalties and interest). The City shall take all reasonable efforts to collect the assessment from each lodging business. The City shall disburse assessments to the SDTMD Corporation according to terms stipulated in the District Operating Agreement. The SDTMD Corporation will have the responsibility of managing SDTMD programs as provided in this District Management Plan.

D. Penalties and Appeals

Penalties may be assessed against those benefited businesses failing to make timely payments. In addition, benefited businesses shall have a right to appeal penalties, as spelled out in the resolution of establishment.

Any benefited business failing to remit the SDTMD assessment within the time required under the resolution of establishment shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency, and one-third of one percent (1/3 of 1%) for each day thereafter, including weekends and holidays. Any penalty assessed shall not exceed twenty-five percent (25%) of the amount of the assessment due and payable for the entire reporting period. The penalty assessed shall be in addition to the amount of the assessment due during the period for which assessments were not timely paid.

In the event there is a determination by the City Treasurer that non-payment of an assessment is due to fraud, the City Treasurer may assess a penalty of twenty-five percent (25%) of the amount of the assessment for the period in which the fraud occurred. Such a penalty for fraud related to payments shall be assessed over the above any penalties assessed daily, as discussed above. A benefited business may, within fourteen (14) days after the service or mailing of a notice of penalty, make application in writing to the City Treasurer for a hearing of appeal. In exercising its appeal rights, a benefited business shall follow the same procedures articulated in San Diego Municipal Code sections 35.0117 and 35.0118.

E. Operators' Duties and Accounting Procedures

- (a) The amount of assessment, if passed on to a transient, shall be separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. A duplicate of the receipt given to each transient shall be kept by the business in accordance with subsection (c) below.
- (b) Each business shall account separately for, and maintain separate monthly summary totals for, taxable and non-taxable rent and the assessment.
- (c) Each business shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer. It shall be the duty of every business liable for the payment to the City of any assessment imposed to keep and preserve, for a period of three (3) years within the boundaries of this City, all business records as may be necessary to determine the amount of such assessment for which the business is liable for payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of assessment due.
- (d) The costs of additional goods and services, which are not rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a lodging business shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

F. Service Plan Budget Summary

A summary of the annual service plan budget for the SDTMD is provided on the following pages. The total thirty-nine-and-one-half-year improvement and service plan budget is projected at approximately \$30,000,000 annually, or \$1,200,000,000 through 2053. There shall be no increase in the assessment rate for the term of the district, unless the terms and conditions as stipulated under Modifications of District Management Plan are met. Total collections may change in subsequent

years according to the inventory of hotel rooms, the room rates, and the occupancy levels. In addition to revenue from TMD assessments, interest and penalties collected on behalf of the TMD by the City are considered as funds available from the District. No other sources of funds are anticipated from the district without modifications of the District Management Plan.

G. Annual Service Plan

In this plan, the City has set out the overarching message of the marketing program and some of its elements, and has left development of the remaining details to the City-appointed owners' association, which is answerable to the City Council. A service plan budget has been developed to deliver services throughout the District. An annual service plan and budget will be developed and approved by the SDTMD Corporation Board of Directors. Please see the budget exhibit below. The budget also includes a portion for contingencies and renewal of the District. Should the SDTMD Corporation Board approve, funds may be appropriated for the renewal effort. If there are funds remaining at the end of the District term and lodging businesses choose to renew, these remaining funds shall be transferred to the renewed District in accordance with Municipal Code Section 61.2523(a) or as amended. If there are funds remaining at the end of the District and lodging businesses choose not to renew, any remaining funds will be spent consistent with this Plan or returned to assessed businesses in equal proportions to the assessment paid by each business over the immediately preceding twelve months.

San Diego Tourism Marketing District Estimated Year One Budget

Category	Percent of Budget	Dollar Amount
Sales and Marketing	92% Fixed	\$27,600,000
Administration	3%* to 5%* including City Administration Costs	\$900,000* to \$1,500,000*
City Administration Costs	TBD – intended to recover actual costs only	TBD
Contingency/Renewal	3% to 5%	\$900,000 to \$1,500,000
Total Annual Budget	100%	\$30,000,000

Although actual revenues will fluctuate, the proportional allocations of the budget above shall remain the same. Every tenth year the allocation for Administration shall be 3-5% plus an additional increment to support the development and presentation of a District Milestone Report. Those years and amounts will be FY 2023 @ \$100,000, 2033 @ 150,000, 2043 @ \$200,000, and 2053 @ \$250,000. Revenue for these expenditures shall be available from the Contingency/Renewal reserve fund.

Administration and Operations

The SDTMD Corporation may annually allocate a minimum of three percent (3%) and a maximum of five percent (5%) of its revenue to the operation and management of the SDTMD Corporation, including City collection costs, except for FY 2023, 2033, 2043 and 2053 when the allocation for Administration shall be increased by \$100,000, \$150,000, \$200,000 and \$250,000 annually to be used to develop the ten-year Milestone Reports. The additional revenue shall come from the Contingency

fund. Annual operating allocations of greater than 3% require a 2/3 majority vote of the Board of Directors.

A detailed budget will be submitted and approved annually and shall include:

- Estimated operating expenses including wages, benefits, and administrative and overhead costs such as rent, supplies, utilities, and travel;
- Estimated cost of directors and officers liability insurance in the amount of \$5,000,000 per director, plus additional insurance as required by the City;
- As required, estimated cost of performance audits of contracted entities receiving funding from the SDTMD Corporation unless otherwise stipulated by the SDTMD Corporation Board of Directors; and
- As required, estimated cost of an annual financial audit of the SDTMD Corporation.

Sales and Marketing

The SDTMD Corporation is not a marketing entity, but rather a funding conduit for development and implementation of effective marketing programs and services that specifically benefit assessed businesses within the District. SDTMD Corporation will be responsible for allocation and distribution of available revenue and will contract with qualified third-party vendors to supply marketing programs and services as required and approved by the Board of Directors.

The SDTMD Corporation will contract for marketing programs and services to promote lodging businesses in the City of San Diego as tourist destinations and to fund projects, programs, and activities that specifically benefit assessed lodging businesses within the boundaries of the District.

General Guidelines:

- (a) The marketing programs and services funded by the TMD are meant to deliver incremental room nights specifically to TMD assessed lodging businesses. It is understood that each individual lodging business implements and funds a unique, proprietary marketing and sales program that is responsible for the consumption of the vast majority room nights at each property.
- (b) Marketing programs and services will be broadly defined by the SDTMD Corporation Board in order to remain current with changing consumer demands, tourism products, and marketing and communication technologies.
- (c) Marketing programs and services will take many traditional and/or innovative forms based on the target market and proposed strategy and tactics for implementation. Therefore, marketing programs and services could include, but shall not be limited to: i) advertising; ii) marketing promotion; iii) direct sales; iv) press and/or public relations; v) new product development; vi) prospective marketing; vii) visitor services; viii) market research; ix) e-marketing and web strategies; x) partnership marketing; xi) special events; xii) social marketing, and more as identified.
- (d) Marketing programs and services will seek to benefit all assessed lodging businesses of thirty (30) rooms or more within the boundaries of the District through a diverse mix of projects, programs and activities. It is recognized that all marketing programs and services will have multi-level benefits to the lodging establishments in the District.

Benefits will be realized directly by individual lodging businesses in the target market area or market segment served by a particular contract program or service funded by the TMD.

- (e) Marketing programs will have measurable result. The SDTMD Corporation Board will establish and regularly update a clearly defined application process for proposed marketing programs. This application will articulate the required qualifications of applicants, the target return-on-investment, and the measurement of results, among other criteria.
- (f) Subject to further provisions in this paragraph, the SDTMD Corporation shall annually allocate a minimum of fifty-five percent (55%) of its District revenue and resources to a single entity for the purpose of comprehensive destination marketing for the City of San Diego. This organization shall be the San Diego Convention & Visitors Bureau (ConVis) or its successor organization. In addition, the SDTMD Corporation shall annually allocate an additional five percent (5%) of its District revenue and resources to the San Diego Convention & Visitors Bureau (ConVis) or its successor organization for the purpose of sub-regional marketing, excluding the Downtown core, within the boundaries of the District. These allocations shall be contingent upon SDTMD's approval of the annual budget (or the budget of its successor organization) which approval shall not be unreasonably withheld.
 - The comprehensive destination marketing services provided by ConVis with SDTMD funds shall be designed to produce room nights for assessed lodging businesses throughout the district.
 - Targeted sub-regional marketing will deliver benefit to coordinated groups of TMD assessment paying lodging businesses throughout the district.
 - When allocating resources and implementing programs in the sub-regional areas consideration shall be given to the number and distribution of TMD assessment paying lodging businesses and room count in those areas.
 - Sub-regional Hotel Advisory Committees:
 - ConVis shall establish criteria for the recognition of sub-regional Hotel Advisory Committees.
 - The TMD Board of Directors shall annually identify the bone fide sub-regional Hotel Advisory Committees.
 - Membership on these Hotel Advisory Committees shall be exclusive to representatives from TMD assessment paying lodging businesses.
 - These committees shall act in an advisory capacity with the primary purpose of consulting, and approving the programs and expenditures relative to sub-regional programs annually proposed by ConVis.
 - Sub-regional programs as proposed and implemented shall be consistent with ConVis' stated goals and objectives and shall utilize proven marketing and media channels.
- (g) Though the amount of base funding for ConVis (or its successor organization) is stipulated, the SDTMD Board has a specific contractual obligation with the City and its assessees "to establish measurable target outcomes for marketing programs and services, including return-on-investment based on deliverable room nights, for *fixed allocations* and

funds awarded through the application process.” (Emphasis added.) This ensures that distribution of TMD funds to all recipient organizations, regardless whether fixed or variable, is subject to oversight by the SDTMD Board of Directors to ensure that the return on investment to the assessed lodging businesses is consistently maximized.

- (h) The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services, either directly or indirectly through a competitive application process, that can deliver a measurable return on investment based on room nights, and that are in addition to the programs funded by fixed allocations within the budget.
 - i) Fundamental to the funding of any application will be the clearly articulated benefit to assessed hotels of thirty (30) rooms or more in the District. While benefit can be delivered in numerous ways, by far the most important benefit will be measured in the delivery of hotel room nights within the District. Successful applications will clearly describe the strategy and tactics for delivering room nights in the District, as well as the number of room nights and estimated gross room revenue projected. The method for calculating and verifying the ROI results must be described in the application.
 - (ii) When considering these fundamental application requirements, priority will be given to:
 - a. Special need periods of the year;
 - b. Special need geographic locations within the City of San Diego; and
 - c. Incremental **new** room nights from existing programs or sponsoring programs.
- (i) Determining Return on Investment (ROI): All successful applicants, including the organizations receiving guaranteed annual funding, will clearly demonstrate a measurable Return on Investment (ROI) based on room nights for the programs or services they propose. Applicants must develop and demonstrate their suggested method of measuring ROI for their particular program as part of their application and their quarterly performance reports. All stated ROI results may be subject to a third-party audit.

City Administration

The City shall be paid for the actual annual cost of services rendered for SDTMD program oversight, collection, and administration. The amount budgeted each year for City Administration is TBD.. Any subsequent SDTMD renewal or modification processes may require additional fees. Cost-of-service fees to be paid to the City include:

- Economic Development - Contract management and reimbursements, coordination and preparation of annual and periodic reports and presentations to Council;
- Office of the City Treasurer - Collection administration, management and auditing;
- Office of the City Auditor - Program auditing;
- Office of the Comptroller - Check disbursements; and
- Office of the City Attorney - Legal review and document preparation.

Contingency/Renewal

A prudent portion of the budget will be set aside in a contingency fund, to be used for unforeseeable costs and/or opportunities in carrying out the SDTMD activities. If at the expiration of the district there are contingency funds remaining, and business owners wish to renew the district, the remaining contingency funds may be used for renewal costs. The SDTMD Corporation shall annually allocate up to five percent (5%) of its revenue to the contingency/marketing opportunity/catastrophe reserve fund for the specific purposes of maximizing unique and unforeseen opportunities or reacting to unforeseen situations to positively impact the assessed lodging businesses. The SDTMD Corporation marketing opportunity/catastrophe reserve fund shall be capped at a maximum of \$10,000,000 in principal contributions until such time as it is required for use. Once the fund has reached the \$10,000,000 cap, any additional assessment funds allocated to the contingency fund shall instead be utilized for sales and marketing programs. Interest returned on the holding and investment of the principal shall be re-invested into the SDTMD Corporation marketing opportunity/catastrophe reserve fund, even if that investment causes the fund to exceed \$10 million.

If the District is renewed following the thirty-nine and one-half (39.5) year term, the available balance, including interest, of the SDTMD Corporation marketing opportunity/catastrophe reserve fund shall be made available to the Corporation managing the renewed District. These previously accumulated funds may be spent consistent with the allocations in this plan or may remain in savings for future expenditure consistent with this Plan. Should the District not be renewed, or at any time be dissolved, the previously accumulated funds shall be proportionally refunded and distributed to the assessed businesses.

VI. BID GOVERNANCE

A. City Administration and Oversight

Petitions weighted by gross room revenue and signed by business owners are required to be submitted to the City in support of renewing the SDTMD in accordance with San Diego Municipal Code section 61.2501 et seq. If sufficient petitions are submitted in support of the renewal, then the City Council shall adopt a Resolution of Intention to renew the district, cause a ballot to be mailed to all affected businesses, and give notice of the required public hearing. If a majority of the ballots that are returned, when weighted by the amount of the anticipated assessment represented by returned ballots favor district renewal, then the City Council shall adopt a resolution renewing the district and authorize the levying of assessments for a period of thirty-nine and one-half (39.5) years.

The City will oversee collection of the assessments and ensure the expenditure of funds is consistent with this District Management Plan. On an annual basis, within 180 days of the close of the City's fiscal year, the City will provide a full accounting of SDTMD assessments collected plus interest and penalties earned.

Prior to the beginning of each Fiscal year, the City Council, in an open meeting, shall consider, and authorize an expenditure for, the proposed services and activities for the fiscal year as presented in the annual Report of Activities.

B. San Diego Tourism Marketing District Corporation Administration

The enabling procedural ordinance provides that the City may contract with a designated nonprofit corporation to implement this plan and carry out specified activities, subject to the terms and conditions enumerated in the contract with that nonprofit. The City shall contract with the SDTMD Corporation, a private nonprofit corporation, to serve as the San Diego Tourism Marketing District Owner's Association, manage the SDTMD assessments, and contract for implementation of the proposed marketing programs and services as outlined in this District Management Plan.

Purpose

The specific purpose of the SDTMD Corporation, a private nonprofit corporation, is to create a positive economic, fiscal and employment impact on lodging businesses in the City through the effective and judicious allocation of its revenue and resources to measurably successful tourism promotion, marketing and advertising programs.

General Powers

Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations of the Articles of Incorporation and Bylaws, the corporation's activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors.

Board of Directors

Only business owners or business owner's representatives paying the tourism marketing district assessment have the right to vote in annual elections of the SDTMD Corporation. And only business owners or business owner's representatives paying the tourism marketing district

assessment have the right to seek nomination or election to the Board of Directors of the SDTMD Corporation. The Board of Directors shall consist of nine (9) directors unless changed by amendment to the Bylaws of the corporation.

Board members, officers and members of the SDTMD Corporation are intended and understood to represent and further the economic interests of the assessed lodging businesses. Board members or officers have a fundamental duty to advance the general welfare of the assessed lodging businesses in the District.

Board Nominations & Elections

Elections to the Board of Directors will be held annually. A call for self-nominations will occur annually and all self-nominees will be listed on the ballot for Board elections. In addition to, or in the absence of, self-nominations, the Nominations Committee of the Board may put forth a slate of nominees at each election.

The procedure for nominations and elections, including the timing for nominations, and the protocol for distribution and collection of ballots, is defined in the Bylaws of the Corporation. SDTMD Corporation will retain a third-party contractor to administer, count and report the results of the balloting for Board elections.

Board Officers

Officers of the Board of Directors shall be elected by a majority vote of the Board at the first regularly scheduled meeting of the Board following annual Board elections.

Board Standards and Conduct

The SDTMD Corporation is organized as a 501(c)6 mutual benefit corporation, and its purpose is the management of the resources of the San Diego Tourism Marketing District. The primary measure of the Corporation's success will be the specific benefit it delivers to the assessed businesses. Because the delivery of a specific measurable benefit to the assessed businesses is required by law, and is the primary legal purpose of the Corporation, it is recognized that members of the Board of Directors, through their assessed businesses, will receive benefit from the activities of the SDTMD Corporation.

In addition, State law provides, and the City's enabling procedural ordinance recognizes, that the SDTMD Corporation is a "private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose." However, the SDTMD Corporation shall comply with the Ralph M. Brown Act, California Government Code section 54950 *et. seq.*, at all times when matters within the subject matter of the District are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et. seq.*, for all documents relating to activities of the district.

Furthermore, the SDTMD Corporation Board of Directors shall comply with the California Corporations Code and shall develop internal policies defining standards, responsibilities and conduct for the Board of Directors.

A Volunteer Board of Directors

The members and officers of the Board of Directors of the SDTMD Corporation will serve as volunteers. They will receive no monetary compensation or remuneration for their service individually or collectively. They are not entitled to nor may they make a claim for reimbursement

of any personal or professional expenses attributed to their service. Other than Directors and Officers Liability Insurance no benefits such as, but not limited to, health insurance, workman's compensation insurance, disability insurance, or paid vacation, will be provided.

Limiting Contact Between Applicants and the Board of Directors

It will be vital that the application and allocation process for funding from the SDTMD Corporation be open, fair, and efficient. To this end, the written submission of the application and supporting materials as well as any public presentation that may be required from applicants will be the foundation for Board discussion and deliberations. Board members are encouraged to limit their contact and communication with applicants regarding their applications or proposed application, and to disclose any such contact or communication prior to participating in the consideration of that applicant's submission.

Report of Activities

Annual Report

The SDTMD Corporation shall cause to be prepared annually a prospective report for the coming fiscal year for which assessments are being levied and collected to pay the costs of the activities described in the report. The first report of the renewed district will include the activities from July 1, 2012 through June 30, 2013. The final report of the renewed district will include activities from July 1, 2052 through June 30, 2053.

The report may propose changes, including, but not limited to, the boundaries of the tourism marketing district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of categories of business, if a classification is used.

The report shall be filed with the City prior to the end of each fiscal year, and shall refer to the tourism marketing district by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, shall contain all of the following information:

- Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within the district;
- The activities to be provided for that fiscal year;
- An estimate of the cost of providing the activities for that fiscal year;
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year;
- The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year; and
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this District Management Plan.

District Milestone Report

The SDTMD Corporation shall cause to be prepared a retrospective and prospective District Milestone Report every ten (10) fiscal years for which assessments are being levied and collected to pay the costs of the activities described in the report. This District Milestone Report will be inclusive of the required annual report for the preceding fiscal year. The first District Milestone Report of the renewed district will include the activities from July 1, 2012 through June 30, 2023, and will be

submitted to the City by December 31, 2023. The final report of the renewed district will include activities from July 1, 2043 through June 30, 2053.

The report may propose changes, including, but not limited to, the boundaries of the tourism marketing district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of categories of business, if a classification is used.

The report shall be filed with the City prior to the end of each tenth fiscal year, and shall refer to the tourism marketing district by name, specify the ten (10) fiscal years to which the report applies, and with respect to those ten (10) fiscal years, shall contain all of the following information:

- Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within the district;
- The general activities to be provided for the next ten (10) fiscal year cycle;
- An estimate of the cost of providing the activities for the next ten (10) fiscal year cycle;
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for each fiscal year for the next ten (10) year cycle;
- The estimated amount of any surplus or deficit revenues to be carried over one year to the next for the next ten (10) fiscal year cycle; and
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this District Management Plan.

The City Council may approve the reports as filed by the SDTMD Corporation, or may modify any portion of the reports and approve it as modified. Such modification shall only be made subject to the noticing provisions of San Diego Municipal Code sections 61.2519 and 61.2520. The Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

Modifications of District Management Plan

The SDTMD Corporation may, at any time, request that the City Council modify this District Management Plan. Any modification of this District Management Plan shall be made pursuant to the following requirements:

- Upon the written request of the SDTMD Corporation, the City Council may modify the District Management Plan after conducting one public hearing on the proposed modifications.
- Upon written request of the SDTMD Corporation, the Council may modify the activities to be funded with the revenue derived from the levy of assessments by adopting a resolution to make the modifications after holding a required public hearing. Notice of the public hearing and the proposed modifications shall be published as provided in San Diego Municipal Code section 61.2507. If the modification includes the levy of a new or increased assessment, the Council shall comply with Code section 61.2507.
- The Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than ninety (90) days after the adoption of the resolution of intention.

Modifications of District Operating Agreement

The City and SDTMD Corporation shall enter into a District Operating Agreement. The District Operating Agreement shall only be modified when meeting the requirements of this section.

Substantive Changes

The SDTMD Corporation may, at any time, request that the City Council make substantive changes to the Agreement for the Operation of the SDTMD. Any substantive modification of this Operating Agreement shall be made pursuant to the following requirements:

- Upon the written request of the SDTMD Corporation, the City Council may modify the Agreement for the Operation of the Tourism Marketing District after conducting one public hearing on the proposed modifications.
- Upon written request of the SDTMD Corporation, the Council may modify the terms of the agreement by adopting an Ordinance to make the modifications after holding a required public hearing. Notice of the public hearing and the proposed modifications shall be published as provided in San Diego Municipal Code section 61.2507.
- Upon written request of the SDTMD Corporation, the Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than ninety (90) days after the adoption of the resolution of intention.

Non-substantive Changes

- Upon written request of the SDTMD Corporation, the Mayor, with concurrence from the City Attorney may make non-substantive changes to the SDTMD Operating Agreement.

Marketing Support Programs: Application Guidelines & Criteria

The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services that can deliver a measurable return on investment based on room nights, and that are in addition to the programs fund by fixed allocations within its budget.

The SDTMD Corporation will solicit and/or receive applications for funding from numerous diverse organizations and entities. Specific application guidelines were implemented during the District's initial five-year term. Changes to the guidelines, criteria and application can only be made by an action of the SDTMD Corporation's Board of Directors.

C. Marketing Support Programs: Stipulated Best Practices

To guide SDTMD contractors, below is a partial list of required Best Practices for implementation of SDTMD funded programs and services. Following renewal of the District and once adopted by the SDTMD Board of Directors, this list may be modified from time to time.

- It is required that all recipients of SDTMD funds certify that those funds will be spent to provide incremental room nights only to SDTMD assessees and not to any other lodging businesses. To the extent that other lodging businesses may receive incremental room nights that portion of the promotion or program will be paid for by non-SDTMD funds.
- It is required that all recipients of SDTMD funds demonstrate availability of other additional non-SDTMD sources of revenue which they will contribute to

the promotion or program to pay for any incidental benefit to non-SDTMD lodging businesses.

- It is required that all advertising materials and media include a call-to-action that directs consumers exclusively to SDTMD lodging businesses.
- It is required that all recipients of SDTMD funds conduct an analysis of room night generation for SDTMD lodging businesses and non-SDTMD lodging businesses in addition to a ROI analysis. Room nights generated for non-SDTMD lodging businesses must be paid for with non-SDTMD funds.

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APPENDIX 1 - CLASSIFICATION OF LODGING ESTABLISHMENTS

“Hotel” means any structure or any portion of any structure which is occupied, or intended or designed for occupancy, by Transients for dwelling, lodging, or sleeping purposes, and is held out as such to the public. “Hotel” does not mean any hospital, convalescent home, or sanitarium. Hotels of 30 or more rooms shall pay the SDTMD assessment.

“Residential Establishments” which are used, rented, or hired out, typically on a monthly basis, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests. Residential establishments (which include apartment complexes) are exempted from the SDTMD assessment.

“Residential/Vacation Hybrid” properties reserve most of their respective rooms for long-term rentals. However, they offer a certain number of rooms available for short-term vacation use. Should 30 or more rooms be offered for short-term rental (less than one month) those rooms are subject to the SDTMD assessment.

“Student Housing” means any structure or any portion of any structure which is occupied, or intended or designed primarily to house students (at any grade level) while in school. If these structures contain 30 units or more, and those units are held out to the public for transient occupancy during student break and/or vacation periods, the transient occupancy of less than one month shall be subject to SDTMD assessment.

“Youth Hostels” of 30 or more rooms are subject to the SDTMD assessment on rentals of less than one month.

“Traditional Time Shares” of 30 units or more, where individual timeshare owners have ownership rights in the property, are subject to the SDTMD assessment on all transient rentals of less than one month.

“Timeshare Hybrid” is a combination of hotel rooms and timeshare rentals. If 30 or more hotel rooms are held out for transient occupancy of less than one month the hotel rooms are subject to the TMD assessment. When 30 or more timeshare units are held out to non-owner, transient occupancy of less than one month, they are subject to the TMD assessment.

“Recreational Vehicle Park” means any park or location where a Recreational Vehicle may be parked for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary hookup facilities are provided. A “Recreational Vehicle Park” may include a campground. Recreational Vehicle Parks are not subject to the TMD assessment.

APPENDIX 2 – SAN DIEGO TOURISM MARKETING DISTRICT PROCEDURAL ORDINANCE

As of date ____, but may be amended from time to time.

San Diego Municipal Code Chapter 6: Public Works and Property, Public Improvement and Assessment Proceedings (12-2007)

Article 1: Public Improvement and Assessment Proceedings

Division 25: San Diego Tourism

Marketing District Procedural Ordinance

(Added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

§61.2501 Purpose and Intent

The purpose and intent of this Division is:

- (a) To allow for the establishment of a *tourism marketing district* to provide for tourism development, including coordinated joint marketing and promotion of San Diego, in order to retain and expand the tourism industry which is currently the third largest revenue generator for the San Diego economy and a key employment sector.
- (b) To create a mechanism to fund generic promotion for tourism development that, pursuant to required supervision and oversight by the City of San Diego [City], as specified in this Division, and that furthers specific governmental goals of the City, and results in a tourism promotional program intended to produce nonideological and commercial communication and, as such, may be entitled to all the privileges and protections of government speech.
- (c) To establish a method by which benefited *businesses* may be assessed for the cost of the *activities* associated with tourism development.
- (d) To provide for the levying of *assessments* upon *business owners* who will benefit from the *activities* undertaken pursuant to this Division.
- (e) To provide a method for the involvement of a nonprofit entity to participate in the preparation and review of proposed *tourism marketing district* plans for *district activities*.
- (f) To provide a method for the City Council to authorize a nonprofit entity with specific interest in the promotion of City tourism to implement and administer *district activities*.

(“Purpose and Intent” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

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§61.2502 Citation of Division

This division may be cited as the San Diego Tourism Marketing District Procedural Ordinance.

(“Citation of Division” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2503 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the San Diego City Council [Council] to order the work shall void or invalidate such procedure or any *assessment* or the cost of the work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the Council in accordance with the provisions of this Division.

(“Rules of Construction” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2504 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

“*Activities*” means, but is not limited to, the promotion of tourism to benefit *businesses* within the *district*.

“*Assessment*” means a levy for the purpose of promoting *activities* which will benefit the *businesses* located within a *tourism marketing district*. *Assessments* levied under this Division are not special taxes.

“*Business*” means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by *transients* for dwelling, lodging or sleeping purposes.

“*Business owner*” means the owner, operator, or authorized representative of the *business* who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to Code section 35.0114.

“*District management plan*” or “*plan*” means a framework for the operation of a *tourism marketing district* as defined in Code section 61.2507.

“*Tourism marketing district*,” or “*district*,” means an area established pursuant to this Division, within which *businesses* pay *assessments* to fund *activities*.

“*Tourism marketing district association*” or “*association*” means a private nonprofit entity which represents, and whose membership includes only the assessed *business owners* or *business owners’* representatives in a *district* and which participates in the preparation and review of proposed *tourism marketing district* plans for *district activities* that specifically benefit assessed *businesses*. A *tourism marketing district association* may be an existing nonprofit entity or a newly formed nonprofit entity.

Pursuant to California Streets and Highways Code section 36614.5, the *association* is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. A *tourism marketing district association* shall comply with the Ralph M. Brown Act, California Government Code section 54950 *et. seq.*, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et. seq.*, for all documents relating to *activities* of the *district*. Board members, officers and members of the *association* are intended and understood to represent and further the economic interest of the City’s tourism industry. Board members or officers have a fundamental duty to advance the general welfare of the tourism industry in San Diego. If, in making decisions, a board member or officer is incidentally or indirectly benefited by that decision, it will not be a violation of the fundamental duty of that board member or officer. Each *business owner* or *business owner’s* representative paying the *tourism district assessment* has the right to vote in annual elections of the *association* and the

right to seek nomination or election to the board of directors of the *association*.
Transient has the same meaning as in Code section 35.0102.
(“Definitions” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)
(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2505 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *activities* or the raising of revenue for the benefit of *businesses*.

(“Alternative Financing Method; No Limit on Other Provisions of Law” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2506 Establishment of Tourism Marketing District

A *tourism marketing district* may be established as provided in this Division, in the following manner:

(a) Upon the submission of a written petition, signed by the *business owners* in the proposed *district* who will pay more than 50 percent of the *assessments* proposed to be levied, the San Diego City Council [Council] will initiate proceedings to establish a *district* by the adoption of a resolution expressing its intention to establish a *district*. Where the same *business owner* would be assessed an amount in excess of 40 percent of the total amount of all *assessments* proposed to be levied, that *business owner’s* share of the *assessment* over such 40 percent shall not be included in determining whether the petition is signed by *business owners* who will pay more than 50 percent of the total amount of *assessments* proposed to be levied.

(b) The petition of *business owners* required under subdivision (a) shall include a summary of the *district management plan*. That summary shall include all of the following:

- (1) A map showing the boundaries of the *district*.
- (2) Information specifying where the complete *district management plan* can be obtained.
- (3) Information specifying that the complete *district management plan* shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.

(2) A time and place for a public hearing on the establishment of the *tourism marketing district* and the levying of *assessments*, which shall be consistent with the requirements of San Diego Municipal Code section 61.2508.

(“Establishment of Tourism Marketing District” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2507 Tourism Marketing District Management Plan

The *district management plan* shall contain all of the following:

- (a) A map of the *district*.
 - (b) The name of the proposed *district*.
 - (c) A description of the boundaries of the *district*, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and *businesses* included. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 *et seq.*, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 *et seq.*
 - (d) The general description of *activities* proposed for each year of operation of the *district* and the estimated maximum cost thereof.
 - (e) The estimated total annual amount proposed to be expended each year for administration and operation of the *district*.
 - (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to calculate the amount of the *assessment* to be levied against their *business*.
 - (g) The planned frequency for the levying of the *assessments*.
 - (h) The specific number of years in which *assessments* will be levied. In a new *district*, the maximum number of years shall be five. Upon renewal, a *district* shall have a term not to exceed 10 years. The *district management plan* may set forth specific changes in *assessments* for each year of operation of the *district*.
 - (i) The proposed timing and duration of *activities* under the *plan*.
 - (j) Any proposed rules and regulations to be applicable to the *district*.
 - (k) A list of the *businesses* to be assessed.
 - (l) A description of the procedures utilized by the *association* for the nomination and election of the *association's* board of directors.
 - (m) Any other item or matter required to be incorporated therein by the San Diego City Council, the San Diego Municipal Code, or any other applicable law.
- The *district management plan* shall be approved by the San Diego City Council at the time the Council considers the petition of *businesses* seeking to establish a *tourism marketing district*. Should the *businesses* or the *tourism marketing district association* seek to modify the *plan* at any time, such modifications shall be subject to the requirements of San Diego Municipal Code sections 61.2521 and 61.2522. (“Tourism Marketing District Management Plan” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)
- (Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2508 Notice of Proposed Assessments; Public Hearing

If the San Diego City Council [Council] proposes to levy an *assessment* that is consistent with the *assessment* proposed in the petition of *businesses* submitted pursuant to San Diego Municipal Code [Code] section 61.2506 and with the *district*

management plan submitted pursuant to Code section 61.2507, the City shall provide notice to the *business owners* of the public hearing set pursuant to paragraph (2) of subdivision (c) of Code section 61.2506.

(a) The Council shall identify all *businesses* which will be benefited by the *activities* and upon which an *assessment* will be imposed.

(b) All *assessments* shall be supported by the *management plan*.

(c) If the proposed *assessment* formula is based on gross room revenue, the amount of the proposed *assessment* for each identified *business* shall be estimated based on gross room rental revenue for the City's most recent complete fiscal year. The City shall give the *business owner* written notice, by mail, of the proposed establishment of the *tourism marketing district*, the estimated total initial annual *assessments* for the entire *district*, the duration of the payments, the reason for the *assessment* and the basis upon which the amount of the proposed *assessment* was calculated, a specific formula in sufficient detail to allow the *business owner* to calculate the proposed *assessment* for the *owner's* establishment, together with the date, time, and location of a public hearing on the proposed *assessment*. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to Code section 61.2508(d) and 61.2508(e), including a disclosure statement that the existence of a majority protest, as defined in Code section 61.2508(e), will result in the *assessment* not being imposed.

(d) Each notice mailed to owners of identified *businesses* within the *district* pursuant to Code section 61.2508(c) shall contain a ballot which includes the City's address for receipt of the ballot once completed by any *business owner* receiving the notice, whereby the *business owner* may indicate their name, reasonable identification of the *business*, and their support or opposition to the proposed *assessment*.

(e) The Council shall conduct a public hearing upon the proposed *assessment* not less than 45 days after the mailing of the notice of the proposed *assessment* to *business owners* of each identified *business*. At the public hearing, the Council shall consider all protests against the proposed *assessment* and the San Diego City Manager shall tabulate the ballots. The Council shall not impose an *assessment* if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the *assessment* exceed the ballots submitted in favor of the *assessment*. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected *businesses*.

(“Notice of Proposed Assessments; Public Hearing” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2509 City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries

At the conclusion of the public hearing to establish the *district*, the San Diego City Council [Council] may adopt, revise, change, reduce, or modify the proposed *assessment* or the type or types of *activities* to be funded with the revenues from the *assessments*. At the hearing, the Council may only make changes to the boundaries of the proposed *tourism marketing district* that will exclude territory containing

businesses that the Council finds will not benefit from the proposed *activities*; and may only change proposed *assessments* by reducing them.

(“*City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

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§61.2510 Resolution of Formation of Tourism Marketing District

(a) If the San Diego City Council [Council], following a public hearing, decides to establish a proposed *tourism marketing district*, the Council shall adopt a resolution of establishment that shall contain all of the following:

(1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the *district*.

(4) A determination regarding any protests received. The Council shall not establish the *district* or levy *assessments* if a majority protest was received.

(5) A statement that the operations of the *district* established by the resolution shall be subject to any amendments to this Division.

(6) A statement that the *activities* to be provided to benefit *businesses* in the *district* will be funded by the levy of the *assessments*. The revenue from the levy of *assessments* within a *district* shall not be used to provide *activities* that directly benefit *businesses* outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the Council at the hearing concerning establishment of the *district*.

(7) A statement specifying the time and manner for levying the *assessments* by the San Diego City Treasurer.

(8) A statement that any *assessment* imposed pursuant to this Division is levied solely upon the *business owner* within the *district*, that the *business owner* is solely responsible for payment of the *assessment* when due, and that, if the owner chooses to collect any portion of the *assessment* from a *transient*, that said portion shall be specifically called out and identified for the *transient* in any and all communications from the *business owner* as a “*San Diego Tourism Marketing District Assessment*.”

(9) A finding that the *businesses* within the area of the *tourism marketing district* will be benefited by the *activities* funded by the *assessments* proposed to be levied.

b) The adoption of the resolution of establishment and recordation of the notice and map pursuant to San Diego Municipal Code section 61.2512 shall constitute the levy of an assessment in each of the fiscal years referred to in the *district management plan*.

(“Resolution of Formation of Tourism Marketing District” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)
(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2512 City Clerk to Record Notice and Map of District

Following adoption of a resolution establishing a *district* pursuant to San Diego Municipal Code section 61.2510 the City Clerk shall record a notice and map of the *district*.

(“City Clerk to Record Notice and Map of District” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)
(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2513 Council Establishment of Benefit Zones

The San Diego City Council [Council] may establish one or more separate benefit zones within the *district* based upon the degree of benefit derived from the *activities* to be provided within the benefit zone, and may impose a different *assessment* within each benefit zone. The Council may also define categories of *businesses* based upon the degree of benefit that each will derive from the *activities* to be provided within the *district*, and may impose a different *assessment* or rate of *assessment* on each category of *business*, or on each category of *business* within each zone.

(“Council Establishment of Benefit Zones” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2514 Establishment, Modification or Disestablishment; Districts and Benefit Zones

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *tourism marketing district* apply to the establishment, modification, or disestablishment of benefit zones or categories of *business*. In order to establish, modify, or disestablish a benefit zone or category of *business*, the San Diego City Council shall follow the procedure to establish, modify, or disestablish a *tourism marketing district*.

(“Establishment, Modification or Disestablishment; Districts and Benefit Zones” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2515 Expiration of Tourism Marketing District

If a *tourism marketing district* expires due to the time limit set pursuant to an Diego Municipal Code section 61.2507(h), a new *district management plan* may be created and a new *district* established pursuant to this Division.

(“Expiration of Tourism Marketing District” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)
(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2516 Collection of Assessments

The collection of the *assessments* levied pursuant to this Division shall be made at the time and in the manner set forth by the San Diego City Council in the resolution establishing the *district* described in San Diego Municipal Code section 61.2510. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution establishing the *district*.

(“Collection of Assessments” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)
(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2517 Assessments Based on Estimated Benefits

Assessments levied on *businesses* pursuant to this Division shall be levied on the basis of the degree of estimated benefit to the *businesses* within the *tourism marketing district*. The San Diego City Council may classify *businesses* for purposes of determining the degree of benefit to the *businesses* of the *activities* provided pursuant to this Division.

(“*Assessments Based on Estimated Benefits*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2518 Exemptions from Assessments

The following *business* revenues are considered exempt from assessment under this Division:

- (1) Revenues from a *transient* who has exercised occupancy for more than one month;
- (2) Revenues from a *transient* whose room rent is being paid directly by the federal government or the State of California, or
- (3) Revenues from a *transient* who is by treaty exempt from locally-levied transient occupancy taxes.

(“*Exemptions from Assessments*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2519 Validity of Assessments; Contests

The validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the *district* and levying the *assessment* is adopted pursuant to San Diego Municipal Code section 61.2510. Any appeal from a final judgment in an action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

(“*Validity from Assessments; Contests*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2520 City’s Promotional Responsibilities

(a) Nothing in this Division shall relieve the City of its responsibility to promote the City of San Diego [City] as enumerated in San Diego Municipal Code [Code] section 35.0128 regarding the use of revenues from the City’s Transient Occupancy Tax [TOT].

(b) The City Manager, or the Manager’s designee, will provide the *tourism marketing district association*, on an annual basis, a statement detailing actual TOT revenues collected under Code section 35.0103 that are available for promoting the City. This statement should also describe the prescribed use of revenues from the City’s TOT to include, but not be limited to:

- (1) The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;
- (2) The annual marketing subsidy as requested by the San Diego Convention Center Corporation and approved by the Council; and
- (3) The annual debt payment for all existing bond obligations relative to

Balboa Park and Mission Bay Park.

(“City’s Promotional Responsibilities” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2521 Modifications of District Management Plan

A *tourism marketing district association* may, at any time, request that the San Diego City Council modify its *district management plan*. Any modification of the *district management plan* shall be made pursuant to this Division.

(“Modifications of District Management Plan” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2522 District Plan Modification; Public Hearing Required

(a) Upon the written request of a *tourism marketing district association*, the San Diego City Council [Council] may modify the *district management plan* after conducting one public hearing on the proposed modifications. The Council may modify the *activities* to be funded with the revenue derived from the levy of the *assessments* by adopting a resolution to make the modifications after holding a public hearing. Notice of the public hearing and the proposed modifications shall be accomplished by a first-class mailing to all affected *businesses* of the resolution of intention to modify the *plan*, as well as an official notice of the public hearing regarding the proposed modifications. If the modification includes the levy of a new or increased *assessment*, the Council shall comply with Code section 61.2508.

(b) The Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention and not less than 45 days after the mailing of the notice as referenced in 61.2522(a) above.

(“District Plan Modification; Public Hearing Required” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2523 Tourism Marketing District Association; Report of Activities

(a) Each *tourism marketing district association* shall cause to be prepared a prospective report for each fiscal year, except the first year, for which *assessments* are to be levied and collected to pay the costs of the *activities* described in the report. The *tourism marketing district association's* first report shall be due after the first year of operation of the *district*. The report may propose changes, including, but not limited to, the boundaries of the *tourism marketing district* or any benefit zones within the *district*, the basis and method of levying the *assessments*, and any changes in the classification of categories of *business*, if a classification is used.

(b) The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the *tourism marketing district* by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes to the boundaries of the *tourism marketing district* or to any benefit zones or classification of *businesses* within the

district.

(2) The *activities* to be provided for that fiscal year.

(3) An estimate of the cost of providing the *activities* for that fiscal year.

(4) The method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to estimate the amount of the *assessment* to be levied against his or her *business* for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than *assessments* levied pursuant to this Division.

(c) The San Diego City Council [Council] may approve the report as filed by the *tourism marketing district association*, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of San Diego Municipal Code section 61.2522. The Council shall not approve a change in the basis and method of levying *assessments* that would impair an authorized or executed contract to be paid from the revenues derived from the levy of *assessments*.

(“*Tourism Marketing District Association; Report of Activities*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008)

§61.2524 Tourism Marketing District Association; Contract With Nonprofit

The *district management plan* may state that a *tourism marketing district association* will provide for and administer the *activities* described in the *district management plan*. If the *district management plan* designates a *tourism marketing district association*, the City will contract with the designated nonprofit corporation to implement the *plan* and carry out specified *activities*, subject to the terms and conditions enumerated in the contract.

(“*Tourism Marketing District Association; Contract With Nonprofit*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2525 Renewal of Expired District

(a) Upon renewal of an expired *district*, any remaining revenues derived from the levy of *assessments*, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed *district*. If the renewed *district* includes additional *businesses* not included in the prior *district*, the remaining revenues shall be spent to benefit only the *businesses* in the prior *district*. If the renewed *district* does not include *businesses* included in the prior *district*, the remaining revenues attributable to these *businesses* shall be refunded to the owners of these *businesses*.

(b) Upon renewal, a *district* shall have a term not to exceed ten (10) years. There is no requirement that the boundaries, *assessments*, or *activities* of a renewed *district* be the same as the original or prior *district*.

(“*Renewal of Expired District*” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2526 Disestablishment of District; Procedures

(a) Any *tourism marketing district* established or extended pursuant to the provisions of this Division, where there is no outstanding and unpaid

indebtedness incurred to accomplish any of the purposes of the *district*, may be disestablished by resolution by the San Diego City Council [Council] in either of the following circumstances:

(1) If the Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the *district*, it shall notice a hearing on disestablishment.

(2) After the first year of operation of the *district*, there shall be a 30-day period each year in which assessed *business owners* may request disestablishment of the *district*. The first such period shall begin upon presentation to Council of the *district's* initial annual report of activities. During each successive year of operation of the *district*, *business owners* shall have such a 30-day period to request disestablishment upon presentation of the *district's* report of activities. Upon the written petition of the *business owners* in the area who pay 50 percent or more of the *assessments* levied, the Council shall pass a resolution of intention to disestablish the *district*. The Council shall notice a hearing on disestablishment.

(b) The Council shall adopt a resolution of intention to disestablish the *district* prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each *business* subject to *assessment* in the *district*. The Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the *business owners*. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

(“Disestablishment of District; Procedures” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2527 Disestablishment; Refund of Assessments

After all outstanding debts are paid upon the disestablishment of a *tourism marketing district*, any remaining revenues derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the *businesses* then located and operating within the *district* in which *assessments* were levied. Such refunds shall be distributed by applying the same method and basis that was used to calculate the *assessments* levied in the fiscal year in which the *district* is disestablished. If the disestablishment occurs before an *assessment* is levied for the fiscal year, the method and basis that was used to calculate the *assessments* levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment shall be spent on *activities* specified in the *district management plan*.

(“Disestablishment; Refund of Assessments” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

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APPENDIX 3 – LODGING BUSINESSES TO BE ASSESSED WITHIN THE SDTMD

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