

000611

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ON) 330
5/01

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): PLANNING AND COMMUNITY INVESTMENT

3. DATE: 1/30/2007

4. SUBJECT: TOURISM MARKETING DISTRICT PROCEDURAL ORDINANCE

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Scott Kessler x34234 MS904

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): Meredith Dibden Brown x37530 MS904

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND			
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT			

9. ADDITIONAL INFORMATION / ESTIMATED COST:
THERE IS NO FISCAL IMPACT.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	SCOTT KESSLER	1-31-07	8	DEPUTY CHIEF	JAMES T. WARING	2/14/07
2	DEPARTMENT DIRECTOR	WILLIAM ANDERSON	2-1-07	9	COO	RONNE FROWAN	
3	ENVIRONMENTAL REVIEW	KENNETH TEASDALE	2/5/07	10	CITY ATTORNEY	ALEX SACHS	2/10/07
4	LIAISON OFFICE	ED PLANK	2/1/07	11	ORIGINATING DEPARTMENT	MEREDITH DIBDEN BROWN	
5	FINANCIAL MANAGEMENT	DEAN ROBERTS	2/7/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	AUDITORS	VICKI TRAVIS	2/1/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 5/1/07			
7							

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S);
Amend Chapter 6, Article 1 of the San Diego Municipal Code by adding Division 25, titled San Diego Tourism Marketing District Procedural Ordinance, and adding sections 61.2501 through 61.2527 which outline the procedures for establishing a Tourism Improvement District in San Diego.

11A. STAFF RECOMMENDATIONS:
Adopt the Ordinance

12. SPECIAL CONDITIONS:
COUNCIL DISTRICT(S): 1, 2, 3, 4, 5, 6, 7, 8.
COMMUNITY AREA(S): Citywide
ENVIRONMENTAL IMPACT: This activity is not a project and not subject to CEQA pursuant to State Guidelines Section 15060 (c) (3).
HOUSING IMPACT: None.
OTHER ISSUES: None.

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EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: January 30, 2007
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: City Planning & Community Investment
SUBJECT: Tourism Marketing District Procedural Ordinance
COUNCIL DISTRICT(S): 1, 2, 3, 4, 5, 6, 7, 8
CONTACT/PHONE NUMBER: Scott Kessler 53-34234/Meredith Dibden Brown 53-37530

REQUESTED ACTION: Adopt the Tourism Marketing District Procedural Ordinance which outlines the procedures required in order to form a Tourism Marketing District in San Diego. The Ordinance would be added to the San Diego Municipal Code by amending Chapter 6, Article 1 to insert Division 25, titled San Diego Tourism Marketing District Procedural Ordinance, which is comprised of sections 61.2501 through 61.2527.

STAFF RECOMMENDATION: Adopt the ordinance so that Tourism Marketing District (TMD) formation efforts may proceed based on the procedures contained within the ordinance.

EXECUTIVE SUMMARY: Representatives from the hotel industry approached City officials about implementing a Tourism Marketing District mid-2005. Industry representatives were interested in developing a new source of revenue for marketing and promotion in order to retain and expand the tourism industry in San Diego. The tourism industry is the third largest revenue generator for the San Diego economy and a key employment sector. The revised projected annual Transient Occupancy Tax (TOT) revenue to the City for FY2007 is \$149.6 million. However, future growth of the industry is dependent on additional marketing of San Diego, especially as more hotel rooms come on-line. Maintaining or increasing hotel occupancy rates will also result in enhanced TOT revenues to the City.

In discussing the concept of a Tourism Marketing District, a number of issues were raised including how such a district might be formed, who would be assessed, how the level of support for the district would be determined, what kinds of improvements and activities would be provided, and the length of time for which assessments would be levied.

Over the last year, hotel industry representatives have been exploring the Tourism Marketing District concept and building support for the proposal. City staff has been reviewing the concept and evaluating the legal framework for forming such a district. It was decided that the most analogous legislation for the desired Tourism Marketing District is the State Property and Business Improvement District (PBID) Law of 1994. City staff met with industry representatives to discuss the identified issues before drafting a new procedural ordinance based on the 1994 PBID Law. The draft procedural ordinance was distributed to the Lodging Industry Association and the San Diego County Hotel-Motel Association in December 2006. Comments were received by City staff and incorporated into the draft which is now recommended to be adopted.

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The procedural ordinance outlines the process for forming a Tourism Marketing District. It allows for a district to be formed for a period not to exceed five (5) years initially. It requires that petitions be obtained in support of the district from hotels-motels representing more than 50% of the proposed assessments in order to bring the matter to City Council. As part of the Council proceedings a mailed ballot would be conducted by City staff and counted by the City Clerk to determine if a majority protest exists. A management plan must be developed by the proponents of the district and made available to all potentially affected hotels-motels as part of the petition drive so that businesses can determine if they support the proposed improvements and activities. If a Tourism Marketing District is formed and is successful then the hotels-motels could vote to extend the district at the end of the initial five (5) year period, if not, then the district would lapse of its own accord.

FISCAL CONSIDERATIONS: There is no fiscal impact associated with the adoption of the ordinance since this is only a procedural ordinance on how to create a tourism assessment district. However, if a Tourism Marketing District is formed in FY2008 then the potential savings to the City would be around \$6 million in the fiscal year and \$10 million a year in subsequent years since funding for the San Diego Convention and Visitors Bureau and other tourism-related organizations would be supported through the Tourism Marketing District assessments rather than being funded by the City with TOT funds.

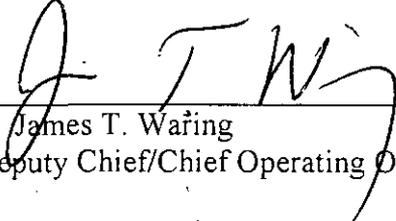
PREVIOUS COUNCIL and/or COMMITTEE ACTION: On July 19, 2006 a presentation was made to the Budget and Finance Committee by the San Diego Lodging Industry Association on the status of the proposal to create a Tourism Marketing District. Since this was an information item only no action was taken.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Both the Lodging Industry Association and the San Diego County Hotel-Motel Association reviewed the draft of the proposed ordinance and provided comments on some of the provisions. Mr. Scott Kessler was the keynote speaker at the January 2007 monthly membership meeting of the San Diego County Hotel-Motel Association and spoke about the concept of the Tourism Marketing District and answered questions from the floor. Immediately preceding the membership meeting he attended the Board of Directors meeting and answered questions from the Board members. Meetings have also been held with representatives of the San Diego Convention and Visitors Bureau, San Diego Regional Chamber of Commerce and the San Diego Convention Center Board to answer questions about the Tourism Marketing District concept.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders are the hotels and motels in San Diego that might ultimately be included in a Tourism Marketing District. There is no impact at this time with the introduction of the procedural ordinance since this is not creating an assessment district.



William Anderson
Originating Department



James T. Waring
Deputy Chief/Chief Operating Officer

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CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 25, TITLED SAN DIEGO TOURISM IMPROVEMENT DISTRICT PROCEDURAL ORDINANCE, AND ADDING SECTIONS 61.2501, 61.2502, 61.2503, 61.2504, 61.2505, 61.2506, 61.2507, 61.2508, 61.2509, 61.2510, 61.2511, 61.2512, 61.2513, 61.2514, 61.2515, 61.2516, 61.2517, 61.2518, 61.2519, 61.2520, 61.2521, 61.2522, 61.2523, 61.2524, 61.2525, 61.2526, AND 61.2527, ALL RELATING TO PROCEDURES FOR ESTABLISHING A TOURISM MARKETING DISTRICT.

An ordinance to amend Chapter 6, Article 1 of the San Diego Municipal Code by adding , Division 25, titled "San Diego Tourism Marketing District Procedural Ordinance" and adding Sections 61.2501, 61.2502, 61.2503, 61.2504, 61.2505, 61.2506, 61.2507, 61.2508, 61.2509, 61.2510, 61.2511, 61.2512, 61.2513, 61.2514, 61.2515, 61.2516, 61.2517, 61.2518, 61.2519, 61.2520, 61.2521, 61.2522, 61.2523, 61.2524, 61.2525, 61.2526, and 61.2527, all relating to the procedures for establishing a San Diego Tourism Improvement District.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

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A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

AWS:mm
04/10/07
Or.Dept:CPCI
O-2006-101
MMS#4407

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 25, TITLED SAN DIEGO TOURISM MARKETING DISTRICT PROCEDURAL ORDINANCE, AND ADDING SECTIONS 61.2501, 61.2502, 61.2503, 61.2504, 61.2505, 61.2506, 61.2507, 61.2508, 61.2509, 61.2510, 61.2511, 61.2512, 61.2513, 61.2514, 61.2515, 61.2516, 61.2517, 61.2518, 61.2519, 61.2520, 61.2521, 61.2522, 61.2523, 61.2524, 61.2525, 61.2526, AND 61.2527, ALL RELATING TO PROCEDURES FOR ESTABLISHING A TOURISM MARKETING DISTRICT.

WHEREAS, the tourism industry is among the City of San Diego's [City's] biggest industries and in 2006 contributed more than \$7.4 billion dollars [\$7,400,000,000] in economic impact to the City's economy and employed nearly 110,000 San Diegans in 2006; and

WHEREAS, in order to retain and expand the City's tourism industry, it is necessary to undertake extensive marketing activities promoting San Diego as a tourist destination; and

WHEREAS, the City's Transient Occupancy Tax [TOT] provides an important but limited amount of resources toward the marketing activities necessary to sustain San Diego's tourism market share; and

WHEREAS, the City Council of the City of San Diego [Council] finds that it is in the public interest and vital to the welfare of the City's economy to expand the market for, and to develop San Diego tourism through a cooperative partnership for tourism promotion, funded in part by the tourism industry and in part by the City; and

WHEREAS, the Council recognizes that smaller businesses in San Diego's tourism industry often lack adequate resources or the market power to conduct these marketing and promotional activities on their own; and

WHEREAS, the marketing programs to be created under this Division are intended to be of benefit to all businesses, including smaller businesses, paying the assessments to be levied should a Tourism Marketing District be established; and

WHEREAS, the impetus for this Division arose out of a cooperative partnership between the Lodging Industry Association, the San Diego Hotel-Motel Association, other tourism industry representatives and the City; and

WHEREAS, it is the desire of this Council to create a mechanism, as provided for under State law, to allow the tourism industry to initiate an industry-approved assessment for the purpose of enhancing the marketing of San Diego as a tourist destination through a Tourism Marketing District; and

WHEREAS, such an assessment district, should it be created, would be operated under the general supervision and oversight of the City, and said district would operate under a Council-approved management plan, NOW THEREFORE,

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

Section 1. That Chapter 6, Article 1, of the San Diego Municipal Code is hereby amended by adding a new Division 25, titled "San Diego Tourism Marketing District Procedural Ordinance", and new sections 61.2501, 61.2502, 61.2503, 61.2504, 61.2505, 61.2506, 61.2507, 61.2508, 61.2509, 61.2510, 61.2511, 61.2512, 61.2513, 61.2514, 61.2515, 61.2516, 61.2517, 61.2518, 61.2519, 61.2520, 61.2521, 61.2522, 61.2523, 61.2524, 61.2525, 61.2526, and 61.2527, to read as follows:

Chapter 6: Public Works and Property, Public Improvement and Assessment Proceedings**Article 1: Public Improvement and Assessment Proceedings****Division 25: San Diego Tourism Marketing District Procedural Ordinance****§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*.

§61.2502 Citation of Division

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

§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.

§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*.

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"*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 proposal as defined in Code section 61.2506.

"*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 shall not have any personal or financial interests that would create a conflict of interest with their proper pursuit of the duties of a Board member. 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.

§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*.

§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

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assessments proposed to be levied, the San Diego City Council [Council] will initiate proceedings to form a *district* by the adoption of a resolution expressing its intention to form 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

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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 61.2507.

§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.

§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 61.2505 and with the *district management plan* submitted pursuant to Code section 61.2506, the City shall provide notice to the *business owners* of the public hearing set pursuant to paragraph (2) of subdivision (c) of Code section 61.2505.

- (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 61.2507(d), including a disclosure statement that the existence of a majority protest, as

defined in Code section 61.2507(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 61.2507(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*.

**§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.

§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 formation 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 formation and recordation of the notice and map pursuant to San Diego Municipal Code section 61.2511 shall constitute the levy of an assessment in each of the fiscal years referred to in the *district management plan*.

§61.2511 Council Resolution Establishing District

If the San Diego City Council [Council], following a public hearing, desires to establish a proposed *tourism marketing district*, and the Council has not made changes pursuant to San Diego Municipal Code [Code] section 61.2508, or has made changes that do not substantially change the proposed *assessment*, the Council shall adopt a resolution establishing the *district*. The resolution shall contain all of the information specified in paragraphs (1) to (9), inclusive, of Code section 61.2509(b).

§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 61.2509 the City Clerk shall record a notice and map of the *district*.

§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.

§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*.

§61.2515 Expiration of Tourism Marketing District

If a *tourism marketing district* expires due to the time limit set pursuant to San Diego Municipal Code section 61.2506(h), a new *district management plan* may be created and a new *district* established pursuant to this Division.

§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 61.2509. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution establishing the *district*.

§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

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purposes of determining the degree of benefit to the *businesses* of the *activities* provided pursuant to this Division

§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 or indirectly 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.

§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 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.

§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 required by the San Diego Convention Center Corporation; and
- (3) The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

§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.

§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

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hearing and the proposed modifications shall be published as provided in San Diego Municipal Code [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.

- (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.

§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 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*.

§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.

§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*.

§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*.

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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.

§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*.

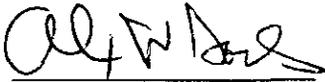
Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

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(O-2007-101)
CORR.COPY

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Alex W. Sachs
Deputy City Attorney

AWS:mm
04/10/07
04/20/07 CORR.COPY
Or.Dept:CPCI
O-2006-101
MMS#4407

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San
Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor