

ORDINANCE NUMBER O- 21202 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 24 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING A TEN-YEAR AGREEMENT  
WITH THE SAN DIEGO TOURISM MARKETING DISTRICT  
CORPORATION FOR ADMINISTRATION AND OPERATION  
OF THE SAN DIEGO TOURISM MARKETING DISTRICT.

WHEREAS, on November 26, 2012, in Resolution R-307843, the City Council renewed the San Diego Tourism Marketing District (TMD) for a period of thirty-nine and one-half (39 1/2) years commencing January 1, 2013 (Resolution of Formation); and

WHEREAS, on or about December 19, 2012, petitioners Melvin Shapiro and San Diegans for Open Government initiated separate lawsuits in San Diego Superior Court challenging the validity of the TMD and associated assessment, styled *Shapiro v. City of San Diego et al.*, Case No. 37-2012-00087765-CU-MC-CTL, and *San Diegans for Open Government City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL (SDOG Case), and on February 25, 2013, Brigitte Browning, Sergio Gonzales, and UNITE HERE Local 30 filed a similar lawsuit, styled *Browning et al. v. San Diego City Council*, Case No. 37-2013-00036413-CU-WM-CTL; and

WHEREAS, in 2016, new lawsuits challenging the TMD were filed, styled *California Taxpayers Action Network v. City of San Diego et al.*, Case No. 37-2016-00030603-CU-MC-CTL (CTAN Case) and *Reid et al v. City of San Diego*, Case No. 37-2016-00041207-CU-MC-CTL (Reid Case); and

WHEREAS, the City Council approved the currently operative five-year operating agreement between the City and the San Diego Tourism Marketing District Corporation (TMD

Corporation) in Resolution R-310731, effective November 1, 2016 (Current Operating Agreement); and

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

WHEREAS, the goal of the Litigation Reserve was to balance the City's interest in funding TMD activities which help generate Transient Occupancy Tax and sales tax revenue against the City's need to build and retain appropriate reserves in the event of adverse legal outcomes arising from litigation challenging the TMD; and

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

WHEREAS, the City Council approved a first amendment to the Current Operating Agreement (First Amendment) in Resolution R-311182, which authorized the expenditure of \$3,000,000 from the Litigation Reserve during Fiscal Year 2018; and

WHEREAS, the City Council approved a second amendment to the Current Operating Agreement (Second Amendment) in Resolution R-311786, which authorized the expenditure of \$5,000,000 from the Litigation Reserve during Fiscal Year 2019; and

WHEREAS, the City Council approved a third amendment to the Current Operating Agreement (Third Amendment) in Resolution R-312466, which authorized the expenditure of \$6,999,332 from the Litigation Reserve during Fiscal Year 2020; and

WHEREAS, given the ongoing need to utilize the Litigation Reserve funds over multiple fiscal years and to alleviate the need to for an annual amendment to the Current Operating Agreement, the TMD Corporation is requesting to enter into a new operating agreement that no

longer requires a Litigation Reserve and that updates certain administrative processes to enhance efficiencies; and

WHEREAS, subject to certain exceptions, San Diego Charter section 99 generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; NOW, THEREFORE,

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

Section 1. The Mayor, or his designee, is authorized to enter into a new ten-year operating agreement with the San Diego Tourism Marketing District Corporation for administration of the San Diego Tourism Marketing District with a term of June 1, 2020 through June 30, 2030 (New Operating Agreement).

Section 2. The Current Operating Agreement, as amended, shall be terminated upon the effective date of the New Operating Agreement.

Section 3. A full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Adam R. Wander  
Adam R. Wander  
Deputy City Attorney

ARW:jdf  
06/02/20  
Or.Dept: Econ. Devel.  
Doc. No.: 2363925

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 06/23/2020.

ELIZABETH S. MALAND  
City Clerk

By /s/ Matthew R. Hilario  
Deputy City Clerk

  
KEVIN L. FAULCONER, Mayor

Approved: 6/24/2020  
(date)

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

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 23 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 24 2020

AUTHENTICATED BY:

(Seal)

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

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

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JUN 09 2020, and on JUN 24 2020.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

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

By [Signature], Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Ordinance Number O- <u>21202</u></p>
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