RESOLUTION NUMBER R-307702

DATE OF FINAL PASSAGE SEP 26 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING THE INTENTION OF THE CITY COUNCIL TO RENEW THE SAN DIEGO TOURISM MARKETING DISTRICT, AND ASSOCIATED ASSESSMENT, THROUGH JUNE 30, 2052; DIRECTING THE MAILING OF BALLOTS TO IDENTIFIED BUSINESSES; AND SETTING DATES FOR A PUBLIC MEETING AND A PUBLIC HEARING WITH RESPECT TO THE RENEWAL.

WHEREAS, the San Diego Tourism Marketing District Procedural Ordinance (SDMC Section 61.2501 *et seq.*) (the "Procedural Ordinance") authorizes the creation of a Tourism Marketing District for the City, and authorizes the levy and collection of an assessment against hotels to fund Tourism Marketing District activities ; and

WHEREAS, on November 5, 2007, by adoption of its Resolution No. R-303077, the City Council established the San Diego Tourism Marketing District (the "District") for a five year term; and

WHEREAS, the City has received a petition requesting the renewal of the District for a period of 39½ years (the "Petition"); and

WHEREAS, the Petition meets the requirements of Section 21.2506 of the Procedural Ordinance and is executed by the owners or authorized representatives of businesses who will pay more than 50 percent of the assessments proposed to be levied in connection with the renewal of the District; and

WHEREAS, a proposed District Management Plan for the renewal period is on file with the City Clerk as Document No. 307702 and incorporated herein by reference (the "District Plan"); NOW, THEREFORE,

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

Section 1. STATEMENT OF INTENTION

The City Council hereby declares its intent to renew the District through June 30, 2052.

Section 2. BRIEF DESCRIPTION OF DISTRICT

The activities of the District can be generally described as marketing and promotional activities conducted for the benefit of assessed hotels in the City. The boundaries of the District are the same as the boundaries of the City. The rate of the assessment levied in connection with the District (the "Assessment") will be 0.55% of assessable rent for all lodging businesses in the City, plus an additional 1.45% of assessable rent for those lodging businesses with 30 or more rooms. Reference is made to the District Plan for a more complete description of the District, the Assessment, and funded activities. Bonds will not be issued in connection with the District.

Section 3. INTERPRETATION

A. For the purposes of the assessment levied in connection with the renewed District:

1. The assessment shall be calculated as a percentage of the Assessable Rent of each lodging business.
2. "Lodging Business" means a business, other than a recreational vehicle park or campground, that is a "hotel" pursuant to SDMC Section 35.0102. Lodging Business does not include a business whose principal purpose is to rent rooms for occupancy to tenants for use as a primary residence, such as a Single Room Occupancy (SRO) Hotel.
3. "Assessable Rent" means "rent," as that term is defined in SDMC Section 35.0102, subject to the exclusions set forth in SDMC Sections 35.0111 and 61.2516. However, for lodging businesses with seventy (70) or more rooms, "Assessable Rent" shall not include rent resulting from stays pursuant to contracts executed prior

to January 1, 2008. For lodging businesses with sixty-nine (69) rooms or fewer, "Assessable Rent" shall not include rent resulting from stays pursuant to contracts executed prior to January 1, 2013. As used in this section "contract" means a written document which was executed by a representative of the lodging business and the transient or the transient's representative prior to the date specified above. The contract must include a provision stating that it is irrevocable, non-cancellable, or non-refundable; signed agreements which can be cancelled are not "contracts" within the meaning of this section. Reservations made at lodging businesses are not considered contracts. Contract does not include agreements between the lodging business and any third-party booking agent for the purpose of booking transient stays at the lodging business, such as a property management company.

B. It is the intent of the City Council that this Section 3 will govern the calculation of the proposed assessment.

C. The City Council intends to authorize the City Treasurer to promulgate such rules and procedures as are necessary to effectuate the efficient and fair calculation and collection of assessments.

Section 4. PUBLIC MEETING

On October 23, 2012, at 2:00 PM, in the Council Chambers located at 202 C Street, San Diego, California, the City Council will hold a public meeting pursuant to Government Code section 54954.6(a)(1) to receive public testimony regarding the Assessment (the "Public Meeting").

Section 5. PUBLIC HEARING

On November 26, 2012, at 2:00 PM, in the Council Chambers located at 202 C Street, San Diego, California, the City Council will hold a public hearing (the "Hearing") pursuant to Section 61.2508(a)(7) of the Procedural Ordinance. At the Hearing, all persons will be permitted to present

written or oral testimony regarding the District and the Assessment and the City Council will consider all objections or protests, if any, to the proposed Assessment. The Hearing may be continued at the discretion of the Council.

Section 6. NOTICE

Staff is directed to mail notice of the Public Meeting and the Public Hearing to the businesses identified in Appendix 3 of the District Plan. Such notice shall comply with the requirements of Section 61.2508(a) of the Procedural Ordinance and shall include a ballot on which the owner or authorized representative of each identified business may indicate support for or opposition to the Assessment.

Section 7. BALLOT PROCEEDING

At the conclusion of the public hearing, a person or persons designated by the City Clerk will tabulate ballots submitted, and not withdrawn, in support of or opposition to the Assessment. Ballots shall be accepted and tabulated in the manner set forth in Exhibit "A" to this Resolution. A majority protest exists if the ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the ballots submitted, and not withdrawn, in its favor. For purposes of calculating whether a majority protest exists, the ballot returned by a lodging business shall be weighted by the estimated assessment obligation of the business. Estimated assessment obligation will be calculated by applying the assessment rates set forth in this Resolution to the lodging business's assessable rents calculated from the TMD Assessments (for lodging businesses with 70 or more rooms) or Transient Occupancy Tax (for lodging businesses with 69 or fewer rooms) remitted for lodging activity during the period of July 1, 2011 through June 30, 2012, as reflected in the City's records as of August 31, 2012. If there is a majority protest against the imposition of the Assessment, the City Council will not impose the assessment. Persons with questions regarding these proceedings may contact Meredith Dibden-Brown,

Program Manager, Economic Development, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Adam R. Wander
Deputy City Attorney

ARW:mcm:js
September 12, 2012
September 19, 2012 COR. COPY
September 20, 2012 COR. COPY 1
Or.Dept: Econ. Dev't
Doc. No. 441747

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of Sept. 25, 2012

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 9-26-12
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

CITY OF SAN DIEGO
TOURISM MARKETING DISTRICT

GUIDELINES FOR THE RETURN AND TABULATION OF TMD ASSESSMENT BALLOTS

I. Completion of Ballots

- **Who may complete a ballot**

A ballot may be completed by the owner, operator, or authorized representative of the lodging business indicated on the face of the ballot, or by anyone authorized by such owner, operator or authorized representative to complete the ballot. Aside from withdrawn ballots, only one ballot may be completed for each lodging business.

- **Duplicate ballots**

If a ballot is lost, withdrawn, destroyed or never received, the City will mail or otherwise provide a duplicate ballot to the lodging business upon receipt of a request in writing delivered to the City Clerk. The duplicate ballot will be marked to show the date on which the ballot was mailed or provided and to identify it as a duplicate ballot. The same procedure applies to duplicate ballots which are lost, withdrawn, destroyed, or never received.

- **Marking and signing the ballot**

To complete an assessment ballot, the person submitting the ballot must (1) stamp or mark the appropriate box supporting or opposing the proposed assessment, and (2) sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner, operator, or authorized representative of the lodging business. Only one box may be stamped or marked on each ballot. Ballots must be completed in ink.

- **Only assessment ballots provided by the City will be accepted**

The City will only accept ballots mailed or otherwise provided by the City.

II. Return of Ballots

- **Where to return ballots**

Ballots may be mailed to the address indicated on the ballot.

Ballots may also be delivered in person to the Office of the City Clerk at City Hall, (prior to the scheduled time for the public hearing on the proposed assessment), or delivered to the City Clerk at the public hearing on the proposed assessment.

- **When to return ballots**

All returned ballots must be received by the City Clerk prior to the time the City Council closes the public input portion of the public hearing on the proposed assessment. The public input portion of the public hearing may be continued from time to time. The City Clerk will endorse on each ballot return envelope the date of its receipt.

- **Withdrawal of assessment ballots**

After returning an assessment ballot to the City, the person who signed the ballot, or the person indicated on City records to be the owner, operator, or authorized representative of the lodging business indicated on the ballot, may withdraw the ballot by submitting a written statement to the City Clerk directing the City Clerk to withdraw the ballot. Such statement must be received by the City Clerk prior to the close of the public input portion of the public hearing on the proposed assessment. When ballots for the assessment are tabulated, the City Clerk will segregate withdrawn ballots from all other returned ballots. The City Clerk will retain all withdrawn ballots and will indicate on the face of such withdrawn ballots that they have been withdrawn.

If any ballot has been withdrawn, the person withdrawing the ballot may request a duplicate ballot.

- **Changes to assessment ballots**

In order to change the contents of a ballot that has been submitted, the person who has signed that ballot may (1) request that such ballot be withdrawn, (2) request that a duplicate ballot be issued, and (3) return the duplicate ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

III. Tabulation of Ballots

- **Which assessment ballots will be counted**

Only ballots which are completed and returned in compliance with these procedures will be counted. Ballots received by the City Clerk after the close of the public input portion of the public hearing on the proposed assessment will not be counted. Ballots which are not signed by the person submitting the ballot or do not contain the printed name of the person submitting the ballot will not be counted. Ballots with no boxes marked, or with more than one box marked, will not be counted. Ballots withdrawn in accordance with these procedures will not be counted.

The City will keep a record of each duplicate ballot mailed or otherwise provided to an owner and will verify, prior to counting any duplicate ballot, that only one ballot has been returned for the lodging business.

The following rules will apply if more than one countable ballot for a lodging business has been returned. If a non-duplicate ballot has been returned, the City will count the non-duplicate ballot and disregard all duplicate ballots. If only duplicate ballots have been returned, the City will count the earliest provided duplicate ballot and disregard the later provided duplicate ballots.

- **How ballots will be tabulated**

Ballots may be counted by hand, by computer or by any other tabulating device.

Ballots will be tabulated by totaling the ballots submitted in opposition to the assessment and totaling the ballots submitted in favor of the assessment. For tabulation purposes, each ballot will be weighted by the estimated assessment obligation of the business submitting the ballot. Estimated assessment obligation will be calculated by applying the assessment rates set forth in this Resolution to the lodging business's assessable rents calculated from the TMD Assessments (for lodging businesses with 70 or more rooms) or Transient Occupancy Tax (for lodging businesses with 69 or fewer rooms) remitted for lodging activity during the period of July 1, 2011 through June 30, 2012, as reflected in the City's records as of August 31, 2012.

- **Who will tabulate ballots**

Ballots will be tabulated by the City Clerk or some other impartial person designated by the City Clerk. The City Clerk or other designated person may be assisted by any of the staff and consultants of the City.

- **Results of tabulation**

The results of the tabulation will be announced following the completion of the tabulation and entered in the minutes of the City Council meeting. If ballots submitted in opposition to the proposed assessment exceed the ballots submitted in favor of the proposed assessment (as tabulated above), the assessment will not be imposed.

IV. Ballot Confidentiality

Returned ballots shall remain sealed in their return envelopes until tabulation commences. After tabulation, ballots are a disclosable public record. Because the weighting of ballots is based on non-disclosable transient occupancy tax return data, the individual weights of ballots shall not be included on any disclosable record. However, the City Clerk shall prepare a document stating the total number and weight of ballots submitted in support of, and in opposition to, the assessment.

V. Reliance

The City may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is authorized to submit a ballot. The City will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and its determination will be final and conclusive.

VI. Status of Proceedings

Ballot proceedings are a majority protest proceeding conducted pursuant to SDMC Section 61.2508. These proceedings are not an election and the TMD assessment is not an assessment subject to the requirements of Article XIII D of the California Constitution.

VII. Delegation

For purposes of these guidelines, "City Clerk" includes any person designated by the City Clerk to perform a function.

VIII. Further Information

For further information, please contact Meredith Dibden Brown, Program Manager, Economic Development, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.