



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: July 29, 2011

IBA Report Number: 11-48

City Council Docket Date: August 1, 2011

Item Number: 200

Tourism Marketing District Procedural Ordinance

OVERVIEW

On August 1, 2011, the City Council will consider the adoption of an ordinance amending sections of the San Diego Municipal Code pertaining to the San Diego Tourism Marketing District Procedural Ordinance. The Procedural Ordinance, as originally adopted in May 2007, establishes the process for forming and renewing a Tourism Marketing District (TMD). The proposed amendments would extend the maximum term of a TMD from 10 years to 40 years, insure the adherence of TMD assessments with Proposition 26, and establish actions to determine the validity of and for contesting the validity of a district. The proposed amendments will be relevant for the upcoming renewal of the current five-year TMD that will expire December 31, 2012. This item was heard at the July 20, 2011 Budget and Finance Committee meeting. At the meeting, the Committee voted to recommend the adoption of the proposed Ordinance by Council. In consideration of the Committee discussion and issues raised, the following report reviews the purpose of the Procedural Ordinance amendments and the next steps involved in the TMD renewal process.

FISCAL/POLICY DISCUSSION

The proposed amendments to the TMD Procedural Ordinance are being brought forward at this time as an initial step in preparation for the process to renew the TMD that is set to expire December 31, 2012. With the adoption of the changes by Council, the new Procedural Ordinance will guide the renewal process that is anticipated to span over several months in preparation for the operation of a renewed district on January 1, 2013. The major amendments would extend the maximum term of a TMD from 10 years to 40 years, insure the adherence of TMD assessments with Proposition 26, and establish actions to determine the validity of and for contesting the validity of a district.

The modification of the 10 year term for the existence of a TMD to a 40 year term in Section 61.2507 (h) of the Ordinance is intended to address the need to support long-term planning by the District. This is particularly the case with the anticipated expansion of the San Diego Convention Center. With current plans for the industry to support a long-term bond obligation to finance the expansion, the industry desires to insure that complimentary marketing investments will be existent through the term of the industry's financial obligation. The TMD would be able to engage in long-term marketing commitments to boost industry performance over the life of the bonds.

Section 61.2526 (a) and (b) is added to establish actions to determine the validity of and for contesting a district. Adding this section protects the TMD from legal contest after the first 30 days of its formation. In particular, Section 61.2526 (a) provides a procedure for the City or the TMD to validate the district assessments, contracts, improvements, or activities by the City or the TMD. Section 61.2526 (b) allows for a limited 30 day contest period of the validity of levied assessments after the establishment of the District.

A large number of the revisions to the language throughout the Procedural Ordinance are purposed to assure the adherence of TMD assessments with Proposition 26. The modifications clarify the direct benefit of the assessed hotels and delineate current and future district adherence to the requirements of Proposition 218. Fees or charges relating to a direct benefit conveyed and that are in accordance with Proposition 218 are exempt from the limitations of Proposition 26, and are therefore not to be considered a special tax requiring approval by 2/3rds of voters in the general public.

Revisions to the Procedural Ordinance will only govern the guidelines for the establishment of the TMD, and is separate from the TMD Management Plan, and contract between the City and a non-profit corporation, which will detail the administrative and operational guidelines for a future TMD. The TMD Management Plan and contract between the City and SDTPC will come before the Council for future consideration. Although proposed amendments to the Procedural Ordinance would allow for a maximum term of 40 years for the existence of the TMD, the actual term of the renewed district, or any other provisions would be established by the Management Plan.

Next Steps after Procedural Ordinance Amendments

In following the District renewal procedures as outlined in the Procedural Ordinance and District Management Plan, industry association representatives are in the initial stages of beginning the petition process for District renewal. This petition will concern a proposed District Management Plan. The Management Plan will establish the boundaries of the district, establish the number of years for which assessments are to be levied, set forth changes in assessments for the years of the operation of the district, and the businesses to be assessed. The Plan will also detail the administrative and operational guidelines for the TMD, including fundable activities and budgeting guidelines for the district.

The hotel and lodging industry stakeholders are currently working on the TMD Management Plan. It is anticipated that by September of 2011 the Management Plan will be finalized, and will then be circulated to affected businesses along with the petition for TMD renewal. If the

petition for TMD renewal is signed by businesses that will pay more than 50% of the assessments to be levied, then the matter will be brought before the City Council. At that point, the Council will take action to approve the Management Plan, and adopt a resolution of intention to establish the TMD. Once it is before Council, the Management Plan can be approved or rejected, but not modified by the Council. As such, we recommend that the Management Plan be presented as an informational item to either Council or Council Committee once it is finalized in order to allow the Council the opportunity to provide input before affected business are petitioned. Once the signed petition is submitted, any proposed change to the Management Plan by Council would have to be re-petitioned. It should also be noted that once the District is established by Council resolution, any future changes to the Management Plan must be initiated by the District.

The following is a list of the anticipated next steps in the TMD renewal process:

- Submittal of petition with support of 50% of lodging participant annual assessment
- City staff verifies petition results
- District Management Plan is approved by the City Council. The City Council will adopt resolution expressing intent to establish a District and will move to require that ballots are mailed to affected hotels in accordance with notice, protest, and hearing procedures
- City Council hearing on ballot count for majority protest
- City Council to establish District by resolution in absence of majority protest

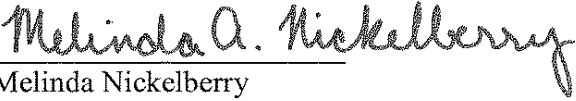
By establishing the district by resolution early in 2012, the TMD will be able to move forward with its application and planning process in anticipation of its continued operation throughout FY 2013. A contract between the City and San Diego Tourism Promotion Corporation (SDTPC) which will detail the administrative and operational guidelines for the TMD would come before Council for approval in early in 2012. As in previous years, the TMD will present its report of activities for FY 2013 before the end of FY 2012. At that time the Council will have the ability to modify the report and approve the modifications regarding the planned activities.

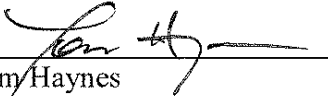
CONCLUSION


The proposed amendments to the TMD Procedural Ordinance are being brought forward at this time as an initial step in preparation for the process to renew the TMD that is set to expire December 31, 2012. With the adoption of the changes by Council, the new Procedural Ordinance will guide the renewal process that is anticipated to span over the next months, in preparation for the operation of a renewed district on January 1, 2013. The major amendments would extend the maximum term of a TMD from 10 years to 40 years, insure the adherence of TMD assessments with Proposition 26, and establish actions to determine the validity of and for contesting the validity of the District.

After the adoption of the amendments to the Procedural Ordinance, the industry will continue to move forward in drafting the District Management Plan to coincide with the petition of lodging businesses regarding the renewal of the TMD. The submittal of the petition to the City will initiate the required Council action for the approval of the TMD renewal that is expected to

conclude in early 2012. Once the Management Plan is before Council, it can be approved or rejected, but not modified by Council. As such, we recommend that the Management Plan be presented as an informational item to either Council Committee or Council once it is finalized in order to allow the Council the opportunity to provide input before affected businesses are petitioned. Other opportunities for Council input on administrative and operational guidelines will arise when the contract between the City and the SDTMD is considered for approval. In addition, when the TMD comes before Council on an annual basis with a report of activities for the upcoming fiscal year, the Council will have the ability to modify the report and approve the modifications relating to the District's activities.


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