




COUNCILMEMBER DAVID ALVAREZ

**City of San Diego
Council District Eight**

MEMORANDUM

DATE: August 5, 2014

TO: Honorable Mayor Kevin Faulconer
Honorable City Attorney Jan Goldsmith

FROM: Councilmember David Alvarez 

SUBJECT: Update on TMD Agreement Liability

The City currently collects revenue generated by most lodging businesses within the City of San Diego on behalf of the Tourist Marketing District (TMD), which is paid out to the TMD on a regular schedule to fund tourism related programs. This arrangement was meant to provide funding for such programs, which are important to allow ongoing promotion of the City by the TMD, while holding some revenue back to guard against City liability associated with pending litigation.

The City Attorney wrote in an November 19, 2013 memorandum to the City Council that "*The decision to distribute any portion of TMD assessment funds prior to the conclusion of litigation entails some level of financial risk to the City...*" Given the City Attorney's previous warning and the court's strict interpretation of the Convention Center Facilities District (CCFD) tax levy, it is critical that the City review and reassess how the courts view the levying of assessments or taxes and adjust any existing agreements in place that may be problematic. As such, I would request that the City Council be provided with an update regarding the current level of exposure and protection the City has with the current TMD agreement. Although the CCFD and the TMD collect revenues in a different manner, considering options for how the existing agreement might be amended is critical to ensuring taxpayers are adequately protected by limiting the City's exposure from an adverse outcome of the pending lawsuit against the City (*San Diegans for Open Government v. City of San Diego*), as a court could find that the City is liable to pay back all assessments collected.

Additionally, I would request that the City Attorney provide the City Council with an opinion on whether the Mayor has the ability to release revenues collected by the TMD and what the City Council's role and authority is in the release of such funds.

CC: Honorable City Councilmembers
Independent Budget Analyst, Andrea Tevlin