

Item S400-

(R-2013-780)

Cor. Copy

Mon - 24, 2013

RESOLUTION NUMBER R- 308297

DATE OF FINAL PASSAGE JUN 27 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE FISCAL YEAR 2014
REPORT OF ACTIVITIES FOR THE TOURISM
MARKETING DISTRICT.

WHEREAS, on November 26, 2012, in Resolution No. R-307843, the City Council renewed the San Diego Tourism Marketing District ("TMD") for a period of thirty-nine and one-half (39 ½) 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 v. City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL, 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 other similar lawsuits could be filed (collectively, the "District Litigation"); and

WHEREAS, the City Council approved an initial five-year operating agreement with the San Diego Tourism Marketing District Corporation ("TMD Corporation") in Resolution No. R-308062, effective March 26, 2013 ("Operating Agreement"), and a First Amendment to the Operating Agreement in Resolution No. R-308065, effective April 23, 2013 ("First Amendment"); and

WHEREAS, the Operating Agreement and First Amendment include terms regarding indemnification in favor of the City and the disbursement of assessment funds to the TMD Corporation during the time that any District Litigation is pending; and

WHEREAS, those terms allow individual lodging businesses to indemnify the City against third-party claims for refunds and to waive rights to any refund, reimbursement, or payment from the City for the purpose of inducing the City to release assessment funds during the time of any pending District Litigation; and

WHEREAS, pursuant to the Operating Agreement and First Amendment, the City shall retain, and not disburse to the TMD Corporation, assessment funds collected from any lodging businesses which do not provide such indemnification and waivers; and

WHEREAS, \$31,818,748 of TMD assessments, interest, and fund balance is projected to be available during the period of July 1, 2013 through June 30, 2014 (“FY2014”); and

WHEREAS, pursuant to section 61.2521 of the San Diego Municipal Code, the TMD Corporation has prepared a prospective report (“Report of Activities”) including an initial budget based on that projected \$31,818,748 for FY2014 with the understanding that full funding will not likely be available to the TMD Corporation due to the City’s retention of a portion of the assessment funds; and

WHEREAS, given these financial constraints, the TMD Corporation has only recommended two entities for funding in the Report of Activities, the San Diego Tourism Authority and Balboa Park Centennial, Inc.; and

WHEREAS, if the TMD Corporation receives less than the projected funds the San Diego Tourism Authority and Balboa Park Centennial, Inc. will each receive their pro rata share of the total allocation of disburseable funds; NOW, THEREFORE,

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

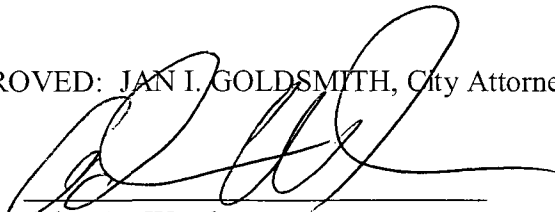
1. The FY2014 Report of Activities for the San Diego Tourism Marketing District is hereby approved with an anticipated budget total of \$31,818,748. This budget figure includes: anticipated TMD assessments for FY2014 of \$28,500,000; projected carryover of \$3,278,748 from FY2013; and projected TMD interest and penalties to be accrued in FY2014 of \$40,000.

2. The Chief Financial Officer is authorized to appropriate and expend for FY2014 TMD activities a total of \$31,818,748, which includes: anticipated TMD assessments for FY2014 of \$28,500,000; projected carryover of \$3,278,748 from FY2013; and projected TMD interest and penalties to be accrued in FY2014 of \$40,000, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury and subject to the City's retention of assessment funds pursuant to the Operating Agreement and First Amendment.

3. The Chief Financial Officer is authorized to appropriate and expend the TMD Fund Balance and TMD Interest Fund Balance from FY2013 at year end closing (less the estimated TMD assessments and TMD interest carryover of \$3,278,748 to be included with the FY2014 budget) for FY2013 expenditures anticipated to be processed in FY2014, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Adam R. Wander
Deputy City Attorney

ARW:mm
06/14/2013
06/20/2013 Cor. Copy
Or. Dept: Econ. Devel.
Doc. #584492

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 24 2013.

ELIZABETH S. MALAND
City Clerk

By *[Signature]*
Deputy City Clerk

Approved: 6/27/13
(date)

Bob Filner
BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

