

NOTICE OF INTENT TO CIRCULATE PETITION [FINAL]

Notice is hereby given of the intention of the persons whose names appear hereon to circulate a petition within the City of San Diego for the purpose of protecting the City's existing and future facilities and infrastructure – including facilities like the Qualcomm Stadium site in Mission Valley and the Downtown San Diego Waterfront, as well as general infrastructure like streets and sidewalks – from the short-term and long-term impacts of tourism caused by the lack of a comprehensive, integrated planning and financing mechanism. The petition seeks to require tourists and the businesses benefitting from tourism to pay their fair share of the costs to develop, maintain, and enhance existing and new facilities and infrastructure in an economically sustainable and environmentally responsible manner; and for the closely related purpose of improving transparency and accountability in the city's planning, financing, managing, and sales and marketing process for tourism-related facilities and infrastructure. Implementing these measures is necessary to ensure that such facilities and infrastructure can be used and enjoyed by tourists and the City's residents alike in the near and distant future.

Be it ordained by the People of the City of San Diego:

I. The San Diego Municipal Code is amended to add the following provisions of this Ordinance or revise the specified provisions as indicated, and collectively these additions and revisions shall be known as the Pay Their Own Way for Tourism-Related Transportation, Educational, and Environmental Facilities and Infrastructure Ordinance (“Ordinance”):

[The following sections are to be added to (and inserted in numerical order into the existing provisions of) Division 1 of Article 5 of Chapter 3 of the San Diego Municipal Code, Transient Occupancy Tax.]

§35.0109 Establishment of Fair, Competitive Tourist Tax Rates

- (a) The purpose of this section is to ensure that the City has an overall Transient Occupancy Tax rate that allows the City to keep its competitive advantage over other major tourism destinations while at the same time having additional revenues to develop, maintain, enhance, manage, and market the public facilities and infrastructure that make the City one of the nation's top tourism destinations. According to the “2015 HVS Lodging Tax Report - USA” by HVS Convention, Sports, & Entertainment, other top destinations imposed higher lodging taxes in 2014 compared to the City's overall lodging taxes; it was reported, for example, that Seattle's rate was 16.5%, San Francisco's rate was 16.25%, Los Angeles' rate was 15.5%, and Anaheim's rate was 17%. The City could therefore raise its overall rate to 15.5% and increase the amount of money paid by tourists to support their fair share of general government services while simultaneously maintaining a highly competitive tax rate. By having a slightly lower rate for tourists who stay at smaller accommodations, the City will also have an even greater competitive advantage while also having needed revenues to support its facilities and infrastructure.

- (b) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of Occupancy in any Hotel with at least 30 rooms available for Occupancy, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay an additional tax in the amount of 5%.
- (c) Notwithstanding the tax imposed by Sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, or 35.0108 and in addition thereto, for the privilege of Occupancy in any Hotel with less than 30 rooms available for Occupancy, each Transient is subject to and shall pay an additional tax in the amount of 3.5%.
- (d) All revenues collected pursuant to the taxes imposed by the City under this section shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance. To this end, the tax imposed under this section is intended to be and shall be a general tax and not a special tax.

§35.0121.5 Review of Records by City Auditor

To ensure that the City Treasurer is collecting and accurately reporting and accounting for all tax that is owed to the City, the City Auditor shall have the same right to inspect records and apply audit procedures that the City Treasurer has under Section 35.0121. It shall be unlawful for any person to refuse to allow or permit such audit to be conducted by the City Auditor after a lawful demand therefor by the City Auditor, even when the City Treasurer has not joined in or made the demand.

§35.0139 Sunset Provisions for Section 35.0128(a)

- (a) Section 35.0128(a) shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by Section 35.0128(a) shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, the limitation on the use of Transient Occupancy Tax imposed by Section 35.0128(a) shall have no force or effect after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.
- (b) The sunset provisions contained in sub-section (a) of this section have no force or effect on Section 35.0128(b)-(c) or on the imposition or continuation of a tax pursuant to Section 35.0103. Sections 35.0103 and 35.0128(b)-(c) remain in full force and effect.
- (c) Nothing in this section is intended to eliminate or reduce any activity, program, or project previously funded from Transient Occupancy Tax

revenues subject to Section 35.0128(a), including but not limited to arts and culture, capital improvements, economic development, safety and maintenance of visitor-related facilities, and major events.

[The following section is to be added to (and inserted in numerical order into the existing provisions of) Division 25 of Article 1 of Chapter 6 of the San Diego Municipal Code, the San Diego Tourism Marketing District Procedural Ordinance.]

§61.2528 Sunset Provisions for San Diego Tourism Marketing District Procedural Ordinance; Limited Exception

- (a) This Division and each of its sections shall terminate, be repealed, and have no further force or effect, and all legal authority, rights, and obligations conferred or imposed by this Division or any of its sections shall be deemed withdrawn in their entirety, as of 11:59 p.m. on the earlier of the first December 31 or the first June 30 to occur after this section takes effect. Without in any way limiting the effect of the prior sentence, no *assessment* may be imposed or collected pursuant to this Division after the earlier of the first December 31 or the first June 30 to occur after this section takes effect.
- (b) The sunset provisions contained in sub-section (a) of this section shall have no force or effect if any and all actions or proceedings contesting the validity of the renewal of a district established under this Division, including but not limited to the validity of any *assessment* levied under this Division, that were commenced prior to December 31, 2014, have been voluntarily dismissed, or dismissed by stipulation of the parties, no later than 60 days after this section takes effect. Nothing in this sub-section (b) is intended to authorize any private entity to perform any function or to have any power or duty; this sub-section merely describes an objective, easily verifiable prerequisite to the exception to the sunset provisions in sub-section (a).

[The following sections are to be added as Division 28 of Article 1 of Chapter 6 of the San Diego Municipal Code, the Tourism-Related Facilities and Infrastructure Protection and Improvement Initiative.]

§61.2801 Name and Purpose of Division: The Tourism-Related Facilities and Infrastructure Protection and Improvement Initiative

- (a) This Division shall be known as the Tourism-Related Facilities and Infrastructure Protection and Improvement Initiative.
- (b) The purpose of this Division is to authorize structures, facilities, infrastructure, and land uses and establish regulations that will broadly and collectively promote economically and environmentally sustainable tourism, in a reasonable manner that minimizes the financial risk and maximizes the financial benefits for the City and that will also serve the needs of tourists and

residents alike. By way of example and not limitation, this Division will achieve its purpose by:

- (1) Facilitating the creation, preservation, and enhancement of access to park and open space in Mission Valley and along the Downtown San Diego Waterfront by limiting the City's ability to grant subsidies, while simultaneously creating incentives for public-private partnerships that benefit taxpayers, residents, and tourists.
- (2) Promoting efficiencies in the City's tourism planning, management, and sales and marketing, and ensuring that the City's priorities for the financing and development of tourism-supporting facilities and infrastructure align with the City's actual needs and financing capabilities.
- (3) Updating and harmonizing provisions of the Municipal Code that currently contribute to poor planning, management, and sales and marketing of tourism-supporting facilities and infrastructure, and that impair the City's ability to achieve its tourism goals in a way that improves performance and is the most economically beneficial for taxpayers.

§61.2802 Creation of Tourism-Financed Improvement Districts; Incorporation and Modification of Property and Business Improvement District Law of 1994

To allow for the creation of tourism-financed improvement districts that will serve the needs of tourists and residents alike, the Property and Business Improvement District Law of 1994 is hereby incorporated into this Division by reference but subject to all of the following modifications and limitations, which shall be construed liberally to achieve the purposes of this Division, and further subject to any and all other applicable legal requirements:

- (a) For each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:
 - (1) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.
 - (2) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.

(3) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.

(4) The member is recommended by the Mayor and approved by the City Council.

(b) For each such district, the governing body of the owners' association shall have at least one member who meets all of the following criteria:

(1) The member is a member of a labor union for at least one year prior to appointment to the governing body.

(2) The member is recommended by the Mayor and approved by the City Council.

(c) Each owners' association shall be considered a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose, except as follows:

(1) Each owners' association shall be considered a public entity for purposes of satisfying any mitigation measures that may be required of a district, the owners' association, or both pursuant to Section 61.2804(c)-(d).

(2) The board members and staff shall be considered public officials for purposes of California Government Code Section 1090. However, no board member or staff is financially interested in any contract made by him or her if the contract provides no greater material benefit to the board member or staff than it provides to any assessee in the district.

(d) Not more than 90 days after the end of each such district's fiscal year, the owners' association shall file audited financial statements for the ended year with the City Clerk. The audited financial statements shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that no expenditure during the ended year was made for any purpose not explicitly authorized by the management district plan and the annual report approved by the City Council for the ended year. The City shall not release any assessments collected for the district more than 90 days after the ended year unless and until the audited financial statements and certification required by this sub-section are filed with the City Clerk. The audited financial statements and certification shall be open for inspection and copying by the public.

- (e) No portion of the assessments collected for any such district may be used to pay for or otherwise provide any form of “activities” as that term is used in the PBID Law, including but not limited to any sales and marketing or promotion.
- (f) No portion of the assessments levied or collected for any such district may be used to pay for or otherwise provide any form of acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use in the coastal zone under either of the following circumstances:
 - (1) The structure, facility, infrastructure, or use in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center, or any activities undertaken there, beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego on October 9, 2013; or
 - (2) The purpose of the structure, facility, infrastructure, or use is to provide convention, exhibition, meeting, or banquet opportunities like those provided at the Convention Center.
- (g) For each such district, the owners’ association shall at all times maintain an Internet Web site and promptly and conspicuously publish there all of the following documents and other information:
 - (1) The agendas of the governing body and any committees thereof, as if the owners’ association were a “local agency” and the governing body and each committee were a “legislative body” as those terms are defined in California Government Code Section 54954.2(d) (including its sub-parts). The published agendas shall include any and all back-up materials distributed to one or more members of the governing body or committee in connection with the meeting.
 - (2) The minutes of each meeting of the governing body and any committees thereof. The minutes shall include a copy of any and all materials submitted to the body or committee in connection with the meeting, except for any records that were distributed exclusively during an authorized closed-session meeting of the governing body or that are exempt from disclosure under the California Public Records Act.
 - (3) A file-stamped copy of the audited financial statements and certification required under sub-section (d) of this section.
 - (4) Any and all state and federal tax returns.

- (5) Each management district plan as defined in the PBID Law.
- (6) Each fiscal year's report as described in the PBID Law.
- (7) For each fiscal year, the names, mailing addresses, phone number, e-mail address, and officer title (if any) for each member of the governing body of the owners' association and for any executive director or other officer or committee member who is not a member of the governing body.
- (8) Any and all resolutions or ordinances of the City Council pertaining to the district.
- (9) Any and all contracts (including any amendments thereto or other modifications thereof) between the City and the owners' association.

The maintenance of the Internet Web site for the purpose of providing public access to the foregoing documents and other information shall not constitute sales and marketing or promotion prohibited under sub-section (e) of this section.

- (h) None of the improvements financed by such a district may include any portion of the acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of an entertainment or professional sports facility. If the improvements financed by a district consist of any convention center, exhibition, and meeting facilities described in Section 61.2804(b)(1) and are combined with any entertainment or professional sports facility, all incremental costs of acquisition, development, design, entitlement, construction, operation, and maintenance exclusively attributable to the added facility shall be paid from sources other than district assessments or any proceeds from bonds issued by the district.
- (i) Each of the property and business owners submitting the written petition for the creation of such a district shall be the holder of a valid Transient Occupancy Registration Certificate within the district.
- (j) "Improvement" as defined in the PBID Law may also include transportation infrastructure that allows tourists to move between frequently visited tourism destinations in the San Diego region (*e.g.*, streetcar lines between Balboa Park and Downtown, an airport intermodal transit center, and light-rail extensions), as well as maintenance, repairs, restoration, or remodeling of a tourist-related facility within its existing physical footprint.
- (k) The City's total annual administrative fee and other charges imposed on the district and owners' association may not exceed 0.25% of the assessments

collected by the City. This limitation may be increased each year based on any adjustment of the consumer price index applicable to the City on the first day of the fiscal year for which the charges are to be imposed.

- (l) The fiscal year of such district and of the owners' association shall at all times be the same as the City's fiscal year.
- (m) Nothing in this section imposes any limitations on such district's ability to increase assessments in order to secure adequate coverage for any debt it may incur. This includes but is not limited to assessments for funds used to make payments of premiums and other costs, fees, and expenses of an insurance policy or policies, for funds used to fund a cash, investment, or other reserve or maintenance account or accounts that are secured for the benefit of financing parties and for the payment of costs, fees, and expenses in connection therewith, for funds used to make payments in respect of such other instrument or instruments as may be agreed with the financing parties, or any combination thereof, in each case for the purpose of satisfying any such coverage requirement.
- (n) Beginning in such district's sixth fiscal year and continuing each fiscal year thereafter, the owners' association shall provide an annual written accounting of the amount of assessments received by the district over the preceding five fiscal years and the amount of such receipts that have accumulated without being spent, encumbered, or set aside for a future expenditure on one or more improvements authorized by the management district plan. The accounting shall be filed with the City Clerk not more than 90 days after the end of the district's fiscal year. The accounting shall be accompanied by a certification from the chief financial officer or treasurer of the owners' association affirming under penalty of perjury that the information contained in the accounting is true and correct. The City shall not release any assessments collected for the district more than 90 days after the ended year corresponding to the accounting unless and until the accounting and certification required by this sub-section are filed with the City Clerk. The accounting and certification shall be open for inspection and copying by the public.
- (o) Not more than 30 days after the accounting and certification described in sub-section (n) of this section is filed with the City Clerk, the owners' association shall refund to the City any and all receipts described in sub-section (n) that have not been spent, encumbered, or set aside for a future expenditure authorized by the management district plan up to the total of all deductions that may have been taken from Transient Occupancy Tax remittances by one or more Operators under Section 61.2807(b) or (c). This refund constitutes the reimbursement of unused incentives taken by Operators to undertake the improvements in the management district plan; it does not constitute a forfeiture, penalty, or any other loss of a vested right because the incentives

would not have been authorized in the absence of a reasonable expectation that they would in fact be used for the purposes specified in the plan.

- (p) No portion of any of the assessments collected by such district may be used for any political purpose, including but not limited to supporting or opposing any initiative, referendum, or other ballot measure, or supporting or opposing any candidate for elective or other public office.
- (q) There shall be no limit on the number of such districts that may be created under this section. If any such districts are created:
 - (1) The first district shall be known as the “Downtown Tourism-Financed Infrastructure District.” Its geographic area shall encompass the entirety of the 92101 and 92134 ZIP codes, as well as that portion of the 92113 ZIP code lying north of the Coronado Bridge and west of Interstate 5.
 - (2) The second district shall be known as the “Suburban Tourism-Financed Infrastructure District.” Its geographic area shall encompass the entirety of the City except that portion encompassed by the Downtown Tourism-Financed Infrastructure District.
 - (3) More than one district may be created simultaneously.
- The specification of the name and geographic area of any district is not intended to constitute the levy of any fee, charge, or other tax or assessment.
- (r) Any such district shall be entitled to borrow or loan money on commercially reasonable terms.
- (s) Nothing in this section is intended to require any expenditure of City funds for any particular purpose, including but not limited to any tourism-, convention-, or sports-related facility.

§61.2803 Approval of Tourism-Financed Improvement Districts

Except to the extent prohibited or required law:

- (a) The City Council shall ministerially approve any tourism-financed improvement district that meets the requirements of Section 61.2802, including any interim actions leading up to a final approval.
- (b) Final approval shall occur not more than 30 days after all legal prerequisites to final approval have been satisfied.

- (c) No interim action shall occur more than 30 days after all legal prerequisites for the interim action have been satisfied.
- (d) If the City Council fails to give any final approval or take any interim action within the time limits specified in this section, the matter shall be deemed approved or taken, as the case may be, by operation of law and without the need for further approval or action by the City Council.

§61.2804 Creation of Downtown Convention and Entertainment Overlay Zone

- (a) The Downtown Convention and Entertainment Overlay Zone (“Overlay Zone”) is hereby created and made applicable to all parcels of real property lying north of Imperial Avenue, west of 17th Street, south of K Street, and east of Park Boulevard in the City of San Diego.
- (b) In addition to any other structures, facilities, infrastructure, or uses authorized by the Municipal Code and applicable land-use plans, and in accordance with all other applicable legal requirements, the structures, facilities, infrastructure, and uses authorized within the Overlay Zone shall include the following:
 - (1) Convention center, exhibition, and meeting facilities;
 - (2) Professional, semi-professional, collegiate, or recreational sports facilities; or
 - (3) Any structures, facilities, or infrastructure that provide for one or more authorized uses, including a single structure or facility that combines one or more authorized uses.
- (c) Each and every project involving one or more structures, facilities, infrastructure, or uses authorized by this section shall comply with any and all mitigation, monitoring, and reporting requirements that would be required under the California Environmental Quality Act in the same manner and to the same extent as a project that is not exempt from environmental review under the Act. The mitigation measures shall include, at a minimum, all of the following:
 - (1) Construction that satisfies the Leadership in Environmental and Energy Design (LEED) silver standard as of the effective date of this section, or the standard’s equivalent if approved by the U.S. Green Building Council, and a plan to reduce vehicle miles traveled to the project that includes incentives for the use of public transit.
 - (2) Compliance with all applicable federal, state, and local rules and regulations governing historical resources.

(3) The proponent or proponents of any project authorized by this section shall make to the San Diego Unified Port District a one-time payment of \$15 million no later than one year after the issuance of any certificate of occupancy for the project, in exchange for the Port District's binding legal commitment to match that payment with \$35 million over a 30-year period. At least 90% of the total \$50 million in funds shall be used exclusively for the development, design, entitlement, and construction of public park and recreational facilities to be included in Phase 2 of the Port District's North Embarcadero Visionary Plan, and up to 10% of the total funds shall be used exclusively to enhance public access and activate public uses along the Downtown San Diego Waterfront adjacent to the San Diego Convention Center. The funds may not be used for any purpose not expressly authorized by this paragraph, and in particular may not be used to satisfy any of the Port District's obligations under Section 1 of that certain Memorandum of Understanding commonly known as Port District Document No. 57019 filed in the Office of the District Clerk on November 15, 2010, except that up to one-half of the proceeds may be used to acquire the real property described in Section 1(C) of the Memorandum of Understanding.

(4) The creation of a reserve fund sufficient to enable one public-agency recipient under Section 61.2806 to incur bonded indebtedness or other debt generating \$5 million in principal proceeds based on a repayment period of not more than 30 years to be used exclusively by the recipient for the development, design, entitlement, and construction of the Urban Rivers Scientific Interpretive Center specified in Section 61.2806(a)(1)(i). After such debt is incurred, at the beginning of each of its fiscal years, the public-agency recipient shall be entitled to an advance from the reserve fund in an amount equal to the recipient's actual out-of-pocket debt service for that fiscal year. The public-agency recipient's request for an advance shall be made in writing and certify under penalty of perjury that the advance will be applied only toward the debt service. The proceeds from the debt may not be used for any purpose not expressly authorized by this paragraph. Upon the full payment and discharge of the debt, including all principal and interest thereon, any funds remaining in such reserve fund shall be promptly paid to the public-agency recipient, to be used solely for the purposes prescribed in this paragraph.

Each of the measures required by this sub-section (c) is necessary to mitigate the potentially significant impacts of the projects contemplated by this section. However, the mitigation measure required by sub-section (c)(4) of this section serves to mitigate some of the potentially significant impacts of these projects as well as some of the potentially significant impacts of the

activities contemplated by Section 61.2806(a)(1)(iv), which are themselves the result of moving development intensities between Mission Valley and Downtown San Diego in order to maximize economic benefits while minimizing environmental harm.

- (d) The mitigation required by sub-section (c) of this section shall be completed, or if not capable of being completed for non-financial reasons shall at least be legally enforceable by any member of the public, no later than the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(1)-(2), and no later than one year after the first issuance of any certificate of occupancy for the project in the case of sub-sections (c)(3)-(4). Except as otherwise required by sub-section (c), any project described in sub-sections (b)(1)-(3) of this section shall be exempt from the California Environmental Quality Act.
- (e) The City shall provide the public with an opportunity to review and comment on any proposed mitigation, monitoring, and reporting requirements under sub-sections (c) and (d) of this section and shall adopt the requirements at a public hearing noticed in accordance with the Land Development Code's requirements for Process Five decisions.
- (f) Nothing in this Division affects any vested rights. Minor modifications to any vested rights that exist as of August 31, 2015, may be processed ministerially, or otherwise in accordance with Process One of the Land Development Code.
- (g) The portion of the Overlay Zone commonly known as Tailgate Park had been purchased by the San Diego Unified Port District for the purpose of accommodating a future expansion of the San Diego Convention Center. Nothing in this section is intended to diminish the parking rights subsequently acquired by the San Diego Padres on Tailgate Park.

§61.2805 Protection of Open Space, Public Access, and Other Tourism-Related and Tourist-Frequented Facilities on Waterfront

- (a) The City has no legal authority to, and therefore shall not, seek the approval of, operate, lease, own, loan money to or for, financially support, or otherwise directly or indirectly participate, whether through a joint powers authority or otherwise, in any form of acquisition, development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use in the coastal zone that in any way comprises or is intended to comprise an extension, expansion, annex or other component or portion of the San Diego Convention Center beyond the physical footprint of the Convention Center structure as it existed at 111 West Harbor Drive in the City of San Diego immediately prior to the California Coastal Commission's approval of San Diego Unified Port District's Port Master Plan Amendment

No. 6-PSD-MAJ-45-13 (Port District Master Plan Amendment no. 45) on October 10, 2013.

- (b) Nothing in sub-section (a) of this section is intended to apply to any structure, facility, infrastructure, or use in the coastal zone that is not contiguous to the San Diego Convention Center as described in sub-section (a) or that is not authorized by the Port Master Plan Amendment identified in sub-section (a); or intended to apply to the City's liability for deferred maintenance of the existing Convention Center as of the effective date of this section.
- (c) Nothing in this Division prevents the City from seeking the qualified electors' approval of a future expansion of the San Diego Convention Center in the coastal zone.
- (d) The City may refinance any bonded indebtedness it has incurred in connection with the San Diego Convention Center in order to obtain a lower interest rate or other savings. In refinancing, however, the City may not extend the term of any existing bonded indebtedness. Additionally, any proceeds that the City may be entitled to receive as a result of the refinancing shall be applied entirely to the principal amount of the indebtedness.

§61.2806 Protection and Enhancement of Mission Valley Options for Shared Visitor and Resident Use Including Eco-Tourism, Higher Education, Environmental Science, and Professional and Collegiate Sports

- (a) As home to the primary stadium of the San Diego Chargers, Qualcomm Stadium in Mission Valley is both a source of civic pride and an attraction to tourists. The approximately 166-acre site also has high ecological value in a high-density area of the City that includes numerous existing hotels and other hospitality infrastructure (including public transportation) in close proximity to the site. As a result, the site provides the City and the public with the opportunity to allow for future development that combines environmental preservation, education, eco-tourism, recreation, and other compatible public uses that together maximize the tourism and public benefit of and access to this land. In furtherance of the foregoing, if at any time the Qualcomm Stadium site ceases to serve as the location of the home stadium for the Chargers or another National Football League franchise, then the City is authorized to sell the approximately 166-acre site directly, or indirectly through structured conduit transactions, to San Diego State University, the University of California at San Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies (collectively, "Qualified Recipient"), subject to all of the following conditions, limitations, and procedures:
 - (1) The instruments for the final transfer of possession, ownership, or use of the site to the Qualified Recipient shall include such use

restrictions and covenants running with the land, for the benefit of the City, that are necessary to ensure that all requirements of this section are satisfied. The transfer instruments, including all required restrictions and covenants, shall be made available for public inspection at least 30 days prior to their execution by the City. At a minimum, the restrictions and covenants shall ensure the following:

- (i) The portion of the site (approximately 28 acres) proximate to the San Diego River and bordered generally on the north by the elevated trolley line shall be reserved exclusively in perpetuity for restoration of that segment of the River in accordance with the San Diego River Conservancy's Strategic Plan Update 2012-2017 and other planning documents applicable to the Conservancy. A portion of the site in reasonable proximity to the existing trolley station on the site shall also be reserved exclusively and in perpetuity for and developed as an Urban Rivers Scientific Interpretive Center, to be operated by the Qualified Recipient as a center for eco-tourism, teaching, public education, and scientific research, including the monitoring of the River from its source to the Pacific Ocean. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership.
- (ii) Separate from and in addition to the portion of the site reserved in sub-section (a)(1)(i) of this section, at least 22 acres of the site shall be reserved exclusively in perpetuity for and developed and maintained as active recreational space, to be designated for shared use by all members of the public, including tourists, and not merely university-affiliated persons. This portion of the site shall be located in reasonably close proximity to the existing trolley station in order to encourage the use of public transit. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. The site's planners and designers shall use their best efforts to maximize shared-use recreational space. At least one-third of the portion of the site described in this paragraph shall be recreational use that is open to the public and not subject to reservation for organized university use.

(iii) To the extent practicable, there shall be an 8- to 10-foot-wide continuous walking and biking path or trail incorporating the entire site. There shall be sufficient paths or trails connecting the portions of the site described in sub-section (a)(1)(i) of this section to the portions of the site described in sub-section (a)(1)(ii) of this section to ensure active use of both portions. The requirements of this paragraph shall be satisfied at the same time as or before the requirements of sub-section (a)(1)(iv) of this section are satisfied, but in any event not more than five years after the first transfer of ownership. That portion of the path and trail passing through the area described in sub-section (a)(1)(ii) of this section may be counted toward satisfying the size requirement of that area.

(iv) The portion of the site not covered by sub-sections (a)(1)(i)-(iii) of this section shall be reserved exclusively and in perpetuity for and developed as university-related facilities to support university uses and activities (*e.g.*, hospitality education or environmental research), including but not limited to student and faculty housing, classroom and administrative buildings, campus-serving commercial buildings, research and development facilities, and intramural and interscholastic sports facilities, such as a stadium for football, soccer, or both (not in excess 40,000 seats). Nothing in this paragraph precludes shared university and other public uses of any facility constructed on the site.

(v) For purposes of the California Environmental Quality Act, the preservation, enhancement, and access measures described in sub-sections (a)(1)(i)-(iii) of this section shall be treated as components of any necessary mitigation for the impacts of the development described in sub-section (a)(1)(iv) of this section and Section 61.2804.

(2) The City may reserve for itself, through easements or as it otherwise deems necessary or appropriate, any and all rights and privileges necessary or convenient to the City in carrying out any of its municipal functions on or through the site, including but not limited to groundwater rights.

(3) In order to prevent real-estate speculation, the total sale price of the site shall under no circumstances be lower than the fair-market value of the property as determined by any appraisal report submitted to the City between January 1, 2015, and August 1, 2015.

- (4) The Qualified Recipient of the property shall provide written confirmation to the City, prior to the transfer's completion, that the Qualified Recipient is ready, willing, and able to receive the property immediately upon the transfer's closing and subject to all other conditions imposed by this section. The deeds, covenants, and other instruments necessary to transfer possession, ownership, or use of the property from the City to the Qualified Recipient shall be recorded in the San Diego County Recorder's Office.
- (5) All development of the site shall be consistent, to the extent practicable, with the goal of creating a fully walkable, bikeable, transit-oriented site that serves members of the university community, tourists, and City residents alike. To the extent practicable, all structures on the site shall employ photovoltaic or next-generation renewable-energy technology in order to generate electricity for on-site use.
- (6) All financing for the development of the site under this sub-section (a) shall be the responsibility of the Qualified Recipient, and nothing in this section is intended to limit the financing mechanisms available to the Qualified Recipient. However, nothing in this section authorizes the City to expend any funds or other resources for any purpose, activity, or use authorized by this section except for the limited purpose of assisting in the achievement of the goal specified in sub-section (a)(5) of this section.
- (7) The City shall comply with all other laws applicable to the sale.
- (8) The sale and development of the site contemplated by this sub-section (a) shall not be exempt from the California Environmental Quality Act.
- (9) All proceeds received by the City from the sale contemplated by this sub-section (a) shall be allocated and deposited as required by law. It is the sense of the qualified electors, in enacting sub-section (a), that any and all proceeds that may be lawfully directed to the City's Infrastructure Improvement Fund should be used for the purposes of the Fund.
- (10) The conditions, limitations, and procedures prescribed throughout this sub-section (a) are intended to expedite the process of transferring possession, ownership, or use of the Qualcomm Stadium site to the Qualified Recipient for the purposes set forth in sub-section (a). Such purposes constitute bona fide governmental purposes under City Charter Section 221. Furthermore, to the extent that the sale or development authorized by this section constitutes a sale or exchange

that requires ratification of the electors under Section 221, the enactment of this section is intended to constitute the requisite ratification.

(11) As used in this sub-section (a), “Qualified Recipient” also includes San Diego State University, the University of California at San Diego, the San Diego River Conservancy, any San Diego Community College, or any combination of such public agencies, any private party (including but not limited to for-profit and non-profit entities), or any combination of the foregoing that seeks to obtain the approximately 166-acre site for the purpose of obtaining the entitlements to carry out the design, development, financing, construction, operation, and maintenance of the site in accordance with the conditions, limitations, procedures, and other requirements and intended uses set forth in sub-section (a) and to subsequently provide for possession, ownership, use, or other control of all or portions of the site to one or more of the aforementioned public agencies as necessary to satisfy such requirements and intended uses; “San Diego State University” includes any and all of the SDSU auxiliary organizations and foundations, and the Trustees of the California State University acting for the benefit of SDSU; “University of California at San Diego” includes any and all of the UCSD auxiliary organizations and foundations, and the Regents of the University of California acting for the benefit of UCSD; “San Diego Community College” includes any and all community colleges located in the City of San Diego and each college’s board of trustees acting for the college’s benefit; and “San Diego Chargers” and “Chargers” include any successor in interest.

(b) Nothing in this Division is intended (i) to affect the project that is within the scope of that certain Draft Environmental Impact Report for the Qualcomm Stadium Reconstruction Project (City of San Diego Project No. 437916; State Clearinghouse No. 2015061061); (ii) to exempt the project that is the subject of the Draft Environmental Impact Report from the California Environmental Quality Act; (iii) as a vote of the qualified electors to authorize or endorse any expenditure of public funds for the project that is the subject of the Draft Environmental Impact Report or to otherwise affect the spending authority of the City with regard to such an expenditure; or (iv) as a vote of the qualified electors to authorize or endorse any sale or other disposition of the Qualcomm Stadium site other than what is described in sub-section (a).

§61.2807 Financial Incentives and Conditions for Tourism-Related Facilities and Infrastructure

(a) Except as expressly authorized in sub-sections (b)-(d) of this section, the City shall not directly or indirectly provide any form or manner of financial

support, lend its credit, pledge anything of value, allow any public asset to be used for less than fair-market value as determined by an independent fee appraiser, or otherwise make any kind of expenditure or commitment for a future expenditure that would in any way facilitate either of the following:

- (1) The development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3); or
- (2) Any activity or service in furtherance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3) other than public activities and services generally made available throughout the City to the public at large, such as police, fire protection, water, and sewer service.

Nothing in this sub-section (a) shall be construed as prohibiting the City from making any real property it owns or controls within the Overlay Zone available on terms that the City deems reasonable in order to facilitate any development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1) or (b)(3) or any activity or service in furtherance thereof, or in furtherance of the public's interest in maximizing the City's Transient Occupancy Tax revenues, provided that in doing so the City does not incur any additional debt that is not first approved by the qualified electors. Any assistance provided by the City pursuant to this paragraph shall comply with all other applicable legal requirements.

Further, nothing in this sub-section (a) shall apply to a project on a parcel within the geographic boundaries of the Overlay Zone that received any land-use approval before this Division takes effect.

It is the sense of the qualified electors that the highest and best use of land within the Overlay Zone is an off-waterfront expansion of the San Diego Convention Center.

- (b) Any Operator of a Hotel who pays an assessment to the Downtown Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:
 - (1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the

district and only to the extent of the assessment amount being paid with the remittance.

(2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (b)(2), “deduction ceiling” means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 2%.

For example, assuming that the total Rent during the remittance period is \$100, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.02 = \2 .

(c) Any Operator of a Hotel who pays an assessment to the Suburban Tourism-Financed Improvement District created in accordance with the requirements of Section 61.2802 may, in the Operator’s sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the district, subject to all of the following procedures and limitations:

(1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.

(2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (c)(2), “deduction ceiling” means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by the actual rate of assessment up to 2%.

For example, assuming that the total Rent during the remittance period is \$100, and that the actual rate of assessment is 1.5%, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.015 = \1.50 .

(3) The other provisions of this sub-section (c) notwithstanding, no deduction may be taken if the Operator is not being assessed by the district (*i*) at the rate of not more than 0.25% for the maintenance,

repair, restoration, or remodeling of the San Diego Convention Center within its existing physical footprint in the coastal zone; and (ii) at the additional rate of at least .25% for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone.

- (d) Any Operator of a Hotel who pays an assessment to a tourism marketing district operating under the San Diego Tourism Marketing District Procedural Ordinance may, in the Operator's sole discretion, deduct from the Transient Occupancy Tax remitted to the City by the Operator pursuant to Division 1 of Article 5 of Chapter 3 of this Municipal Code a portion of the assessment paid by the Operator to the tourism marketing district, subject to all of the following procedures and limitations:

(1) The deduction from the Transient Occupancy Tax remittance may be taken no sooner than when the Operator remits its assessment for the district and only to the extent of the assessment amount being paid with the remittance.

(2) Regardless of how frequently an Operator remits Transient Occupancy Tax, under no circumstances may the deduction from any remittance exceed the total amount of the assessment actually paid by the Operator during the remittance period or the deduction ceiling for that period, whichever is less. As used in this sub-section (d)(2), "deduction ceiling" means the product of the total Rent subject to Transient Occupancy Tax during the remittance period multiplied by 0.55% in the case of a Hotel with less than 30 rooms available for Occupancy, or by 2% in the case of a Hotel with at least 30 rooms available for Occupancy.

For example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with at least 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.02 = \2 .

As a further example, assuming that the total Rent during the remittance period is \$100 for an Operator of a Hotel with less than 30 rooms, the deduction ceiling described in this sub-section would be represented by the following formula: $\$100 * 0.0055 = \$.55$.

- (e) Sub-sections (b)-(d) of this section shall have no force or effect while Section 35.0128(a) of this Municipal Code remains in force and effect.

§61.2808

Governance of Tourism Sales and Marketing and Convention Center Bookings; Withdrawal of Authority to Outsource Governance and Bookings; Alternative Financing for Off-Waterfront Convention Center Expansion

- (a) In order to maximize the City's Transient Occupancy Tax revenues, as well as optimize the planning and budgeting process for tourism-related facilities and infrastructure, it is the sense of the qualified electors that the City shall take all reasonable steps to consolidate City-wide tourism and San Diego Convention Center management, sales and marketing, and bookings.

- (b) The City may enter into a management agreement with a private contractor to manage and oversee the operations and maintenance of the San Diego Convention Center, including any related facility outside the coastal zone. Any such agreement shall be subject to the following procedures and limitations:
 - (1) The management agreement shall give the contractor responsibility for all short-term and long-term bookings at the Convention Center and any related facility under the City's control immediately prior to the making of the agreement.

 - (2) The management agreement shall require the contractor to assume all liabilities, debts, and other contractual obligations, and other obligations of the City, the San Diego Convention Center Corporation, and the Convention Center Expansion Financing Authority in existence at the time the agreement between the City and the contractor is made, including but not limited to deferred maintenance and current maintenance, labor and employment agreements, booking commitments, and lease agreements; except that the contractor need not assume, and the City shall retain, the City's debt-service obligations under any indentures and related contractual obligations for bonded indebtedness related to the Convention Center. Except as expressly permitted in the preceding sentence, the contractor may not assume less than all such liabilities, debts, contractual obligations, and other obligations. Prior to the City's approval of the management agreement, the contractor shall submit a detailed written plan specifying how and when each assumed obligation will be satisfied. The plan shall ensure that all obligations that were not satisfied by the City prior to its approval of the management agreement, and all obligations that must be satisfied by the City during the term of the management agreement but are being assumed by the contractor, are satisfied by the contractor in a timely manner and in any event no later than the end of the term of the management agreement. Not more than 90 days after the end of each fiscal year of the contractor, the contractor's chief executive officer or president shall certify under penalty of perjury that the contractor

satisfied all obligations that were required to be satisfied according to the plan during the ended fiscal year. The annual certification shall include the information required by sub-sections (b)(11)(i)-(ii) of this section. The City shall not make any payment to the contractor, including any reimbursement, more than 90 days after the end of the contractor's fiscal year unless and until the City receives the certification required by this sub-section.

(3) The City may not compensate the contractor or provide any direct or indirect financial support of any kind to the contractor in connection with the management agreement, except as expressly authorized by sub-section (b)(4) of this section. The contractor may hire a fee-for-service manager to carry out the contractor's obligations under the management agreement, at no cost to the City. The contractor's decision to hire such a manager shall not relieve the contractor of its obligations to ensure the performance required by the management agreement with the City, or change the nature of the relationship between the City and the contractor under the agreement.

(4) The City, the contractor, or both may enter into any other agreement with any third party for the purpose of generating assessments or other revenues that can be used by the contractor to promote the City as a tourist destination or to compensate the contractor for its services under the management agreement with the City, provided that there is no cost to the City beyond that authorized by sub-section (b)(3) of this section. Nothing in this paragraph relieves the City of its obligation to comply with all applicable laws if its involvement is required for the generation of such assessments or revenues.

(5) The contractor's governing body shall have at least one member who meets all of the following criteria:

(i) The member has been an auditor, forensic accountant, certified public accountant, or attorney with finance experience for at least five consecutive years prior to appointment to the governing body.

(ii) The member has certified under penalty of perjury that not more than 10% of the value of his or her non-retirement investments during the preceding five years has been in one or more tourism-related businesses.

(iii) The member has certified under penalty of perjury that not more than 10% of his or her gross income during the preceding five years has come from one or more tourism-related businesses.

(iv) The member is recommended by the Mayor and approved by the City Council.

(6) The contractor's governing body shall have at least one member who meets all of the following criteria:

(i) The member is a member of a labor union for at least one year prior to appointment to the governing body.

(ii) The member is recommended by the Mayor and approved by the City Council.

(7) The management agreement may not contain any term or provision that is inconsistent with this section, but it may contain any other term or provision that is consistent with this section and that the City deems necessary or appropriate.

(8) The contractor may be, but is not required to be, a tourism-financed improvement district created and approved under Sections 61.2802 and 61.2803 or a tourism marketing district operating under the authority of the San Diego Tourism Marketing District Procedural Ordinance.

(9) The contractor's governing board shall be subject to the Ralph M. Brown Act, and the contractor shall be subject to the California Public Records Act, for all purposes related to the management agreement.

(10) A fiduciary relationship between the contractor and the City under the management agreement is created by this section, with the contractor being required to act as a fiduciary toward the City and over all of the assets, operations, and other subject matter of the agreement. This relationship includes but is not limited to the contractor's obligation to maximize the City's return on the assets, operations, and other subject matter of the management agreement. Any management agreement under which the contractor is not deemed to be a fiduciary shall be void *ab initio*.

(11) The annual certification required under sub-section (b)(2) of this section shall include all of the following information:

(i) The City's total Transient Occupancy Tax revenues during the recently completed fiscal year that were directly attributable to events taking place at the San Diego Convention Center during that fiscal year.

(ii) The City's total expenditures related to the San Diego Convention Center during the recently completed fiscal year.

(12) If any labor agreement expires and the parties reach an impasse in attempting to renegotiate, extend, amend, or otherwise modify that agreement, the matter shall be submitted to binding arbitration.

(c) The City shall have no authority to enter into a management agreement as described in sub-section (b) of this section or any other agreement with a private contractor concerning the management of or bookings at the San Diego Convention Center, unless and until the following condition is satisfied:

(1) A tourism-financed improvement district has been created and approved under Sections 61.2802 and 61.2803 exclusively for the acquisition, development, design, entitlement, construction, operation, and maintenance of the structures, facilities, infrastructure, and uses necessary for an expansion of the San Diego Convention Center in the Overlay Zone with a size deemed appropriate by the City, and all required maintenance, for a period of operation not less than 20 years.

(d) If the condition described in sub-section (c) of this section is not satisfied by the last day of the sixtieth calendar month after this section takes effect, then all of the following shall apply:

(1) The City's authority to enter into a management agreement pursuant to sub-section (b) of this section shall be deemed withdrawn, and sub-section (b) shall have no further force or effect.

(2) Sections 61.2802 and 61.2803 shall be deemed withdrawn and shall have no further force or effect, and no district created thereunder shall have the legal authority to continue its operations.

§61.2809 Definitions

(a) As used in this Division, "coastal zone" means the geographical area defined by California Public Resources Code Section 30103 (and any regulations thereunder), regardless of whether the City has land-use or other regulatory authority within the area.

(b) As used in this Division, "City" shall include any and all departments, agencies, and offices of the City, and shall also include each and every discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30,

2014, and each and every component unit of any kind that may be included in a future Comprehensive Annual Financial Report for the City of San Diego.

- (c) As used in Section 61.2808, “private contractor” means an entity that is not a discretely presented component unit, blended component unit, or other component unit of the City as identified in the Comprehensive Annual Financial Report for the City of San Diego for Fiscal Year Ended June 30, 2014.
- (d) As used in this Municipal Code, “independent fee appraiser” means an appraiser who is selected for the assignment solely by the City, and who certifies in writing under penalty of perjury and based on personal knowledge that he or she has had no financial relationship of any kind with any party to the proposed transaction other than the City within a one-year period prior to being selected by the City for the assignment.
- (e) As used in Sections 61.2802 and 61.2807, “Operator” and “Hotel” have the same meanings that they have under Section 35.0102 of this Municipal Code.
- (f) As used in this Division, “project” has the same meaning that it has under California Public Resources Code Section 21065.
- (g) As used in this Division, “qualified electors” has the same meaning that it has under San Diego City Charter Section 6.
- (h) As used in this Division, “California Public Records Act” refers to the California Public Record Act, California Government Code Section 6250 *et seq.*
- (i) As used in this Division, “Ralph M. Brown Act” refers to the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*
- (j) As used in this Division, “California Environmental Quality Act” refers to the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*
- (k) As used in Section 61.2808, “construction permit” has the same meaning that it has under Section 113.0103 of this Municipal Code.
- (l) As used in Section 61.2802, “Transient Occupancy Registration Certificate” has the same meaning that it has under Section 35.0113 of this Municipal Code.
- (m) As used in Section 61.2807(b)-(d), “Rent” has the same meaning that it has under Section 35.0102 of this Municipal Code.

- (n) As used in this Division, “Property and Business Improvement District Law of 1994” and “PBID Law” refer to the Property and Business Improvement District Law of 1994, California Streets and Highways Code, Division 18, Part 7, Section 36600 *et seq.*

§61.2810 Construction of Division

In the event of any conflict between one or more provisions of this Division and any other provision of the Municipal Code, the provisions of this Division shall govern to the extent of the conflict. In the event of any conflict between one or more provisions of this Division and any provision of the Property and Business Improvement District Law of 1994, this Division shall control to the extent of the conflict.

§61.2811 Limitations Period for Judicial Review

No action to challenge the validity of any portion of this Division shall be maintained unless such action is commenced within 30 days after the Division takes effect.

III. Effective Date; Amendment

This Ordinance shall take effect 30 days after the date of the election at which the qualified electors approve it. The Ordinance may be repealed or amended only by the requisite vote of the qualified electors. As used in this paragraph and the next paragraph, “qualified electors” has the same meaning that it has under San Diego City Charter Section 6.

IV. Interdependence; Interpretation

The provisions of this Ordinance are essentially and inseparably connected and interdependent. If any portion of this Ordinance is held to be invalid by a court of competent jurisdiction, then none of the remaining portions shall have any force or effect. The need for comprehensive and integrated planning, financing, management, and sales and marketing for tourism-related facilities and infrastructure being so important to the qualified electors, the remaining portions of the Ordinance would not have been approved by them without the invalid portion.

Nothing in this Ordinance is intended to conflict with any requirement, prohibition, or other provision of the San Diego City Charter, the California Constitution, or any other controlling legal authority. Constructions of this Ordinance that give rise to such a conflict shall be avoided to the maximum extent permitted by law.

V. Resolution of Conflicting Provisions in Other Measures

In the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but this Ordinance receives a greater number of affirmative votes, it is the intent of the People of the City of San Diego that the

provisions of this Ordinance shall prevail in their entirety and the provisions of all other related ordinances shall be null and void.

The other provisions of law notwithstanding, in the event that this Ordinance and another ordinance or ordinances relating to one or more portions of the subject matter of this Ordinance pass at the same election, but such other ordinance or ordinances receive a greater number of affirmative votes, it is the intention of the People of the City of San Diego that the provisions of this Ordinance shall also take effect to the extent that they are not in direct conflict with the provisions of such other ordinance or ordinances.

VI. Defending the Ordinance

In the event that the City declines to defend or declines to appeal an adverse judgment against the Ordinance, it is the intent of the People of the City of San Diego to grant formal legal authority to the Ordinance’s proponents or any of their designees to defend this Ordinance, either by intervening in or by defending the Ordinance on behalf of the People and the City in a legal proceeding, because the proponents of this Ordinance have a direct and personal stake in defending this Ordinance.

In the event that a proponent or a proponent’s designee is defending this Ordinance in a legal proceeding because the City has declined to defend it or declined to appeal an adverse judgment against it, the proponent or the proponent’s designee shall: (1) act as agents of the People of the City of San Diego who approved this Ordinance and the City; (2) enjoy and be subject to all ethical, legal, and fiduciary rights and duties applicable to agents of the People and the City in such legal proceedings; and (3) take or be subject to the Oath of Office prescribed by Section 211 of the San Diego City Charter for the limited purpose of acting on behalf of the People and the City in such legal proceeding.

No action to challenge the validity of any portion of this Ordinance shall be maintained unless such action is commenced within 30 days after the Ordinance takes effect. In the event of such a challenge, the summons and complaint shall be personally served on the City and on the proponents of this Ordinance not more than 10 days after the challenge is commenced. The court shall dismiss any challenge that is not commenced, or for which the summons and complaint are not served, as prescribed in this paragraph.

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STATEMENT OF REASONS

Tourism is a big part of San Diego's identity – the product of our location, weather, and international image. Critically important to our economy and our life style, it only requires from us the delivery of first class-facilities necessary to accommodate visitors who demand beautiful venues and the very best of experiences.

Tourism both benefits from and impacts San Diego's infrastructure. The health of each is inextricably linked.

But our tourism-related and -impacted facilities and infrastructure have become run-down and are failing from lack of vision and years of neglect. This is the result of there being no single, coordinated mechanism to handle the necessary planning, financing, management, and sales and marketing of these public assets.

Our City's tourist tax is far below its competitive market average, contributing to a roughly \$1.7 billion facilities infrastructure deficit throughout the City.

When businesses and visitors pay their fair share to keep up public assets, we all benefit.

A recent report found that our competing cities' tourism tax rates are much higher than the City's rate: Anaheim 17%, Seattle 16.5%, San Francisco 16.25%, and Los Angeles 15.5%. San Diego is at 10.5% – at least 45% behind – and that adds up to delayed repairs, declines in public maintenance, the postponing of new attractions and venues, and the loss of world admiration. We cannot allow that to continue.

Along with fair-share funding, we also need a better approach to oversight of these issues, and our valuable tourist assets, so our problems do not repeat themselves.

Requiring tourists and tourism businesses to "Pay Their Own Way" is a sensible, unified way to manage our tourism economy in a financially and environmentally responsible manner.