



CITY COUNCIL STAFF REPORT

DATE: SEPTEMBER 7, 2016 UNFINISHED BUSINESS

SUBJECT: PROPOSED RESOLUTION INITIATING PROCEEDINGS FOR THE
CREATION OF A TOURISM BUSINESS IMPROVEMENT DISTRICT
FOR SMALL HOTELS

FROM: David H. Ready, City Manager

BY: Chief of Staff/City Clerk

SUMMARY

The Small Hotels of Palm Springs (SHOPS) and the Desert Gay Tourism Guild (DGTG) have requested that the City of Palm Springs establish a Tourism Business Improvement District ("the TBID"), and collect an assessment on hotels of 49 rooms or less located in the City to be used for additional marketing dedicated to small hotels.

The City Council will consider a resolution initiating proceedings and creating an advisory board to study and advise the City Council as required by law.

RECOMMENDATION:

1. Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, INITIATING PROCEEDINGS TO ESTABLISH A PALM SPRINGS SMALL HOTEL BUSINESS IMPROVEMENT DISTRICT PURSUANT TO THE PARKING AND IMPROVEMENT LAW OF 1989."
2. Direct Staff as to the City Council preference to the membership of Small Hotel TBID Advisory Board.

STAFF ANALYSIS:

A TBID is a special benefit assessment district that can be established by the City Council, under existing State law¹, for the specific purpose of funding activities that promote tourism. Currently, 67 California Cities have TBID programs in place. This

¹ Parking and Business Improvement Area Law of 1989. Cal. Streets and Highways Code Section 36500 et seq.

mechanism is also in place on larger hotels with an assessment to fund the Greater Palm Springs CVB (GPSCVB). The establishment of this district would have no effect on the current GPSCVB assessment.

The law provides that business operators are assessed and pay the assessment to the City. Cities have utilized a percentage multiplied against daily hotel revenue as the formula for imposing the assessment. Further, this law provides cities have the express authority to make improvements and engage in business promotional activities that benefit the assessed businesses within the designated boundary area.

It is noted that the assessment is made against the business operator, and not against the property itself. Therefore, the assessment is legally treated by ordinance enactment as a debt owed by the business operator to the City. The City Attorney advises that Proposition 218 rules are not applicable because the assessment is not a tax on real property, and case law has clearly held that this enabling law (Streets and Highways Code sections 36500 et seq.) is not subject to Proposition 218 restrictions. (Howard Jarvis Taxpayers Assn. v. City of San Diego (1999) 72 Cal. App. 4th 230)

The formation of the district is not by election of the business operators, but by majority protest procedure. After notice, any person subject to the proposed assessment may protest the establishment of the TBID. Each protest is weighted by the amount of the assessment to be paid. The TBID cannot be established if a majority of the affected businesses subject to the TBID, weighted by assessment, file a timely protest. Therefore, in order for a protest to be successful, businesses representing greater than 50% of the value of the total assessment to be collected must protest the formation of the district.

SHOPS and DGTG are recommending a 1% assessment on room revenue. The boundaries of the district would be citywide, but the assessments would be limited to hotels of 49 rooms or less.

The assessment would be collected by the City. SHOPS and DGTC are recommending the Palm Springs Bureau of Tourism (PSBOT) administer the BID funds and promotional programs as a segregated and restricted fund.

If the TBID is approved, by law, the City Council is required to appoint an advisory board that will report to the City Council annually. The Annual Report must include an activity review, future activities, reconciliation of funds and a recommendation on the level of assessment for the following year. Thereafter, the City must annually adopt a Resolution of Intent to Levy Assessments and at a subsequent meeting hold a public hearing and adopt a resolution levying the assessment.

At this meeting it is recommended the City Council direct staff how to proceed with the formation of the advisory board created by the resolution to initiate the proceedings.

The City Council may appoint an advisory board, or use an existing board as the TBID advisory board.

The hoteliers would recommend an advisory group to determine the programs and efforts to be funded and recommend the PSBOT administer the development and implementation of the programs.

The formation of a TBID involves a number of legal steps the City Council is required to follow:

**SCHEDULE OF ACTIONS
 SMALL HOTEL TOURISM IMPROVEMENT DISTRICT**

Step	Action	Meeting/Notice	Meeting
1	Adoption of Resolution Appointing Advisory Board and Ordering Notice of Public Meeting and Public Hearing	City Council Meeting	09-07-2016
2	Mailed Joint Notice of Public Meeting and Public Hearing to assessed businesses	After Adoption of Resolution in Step 1	09-15-2016
3	Public Meeting	No Less than 10 Days After Step 2	10-05-2016
4	Adoption of Resolution of Intention	At Same City Council Meeting as Step 3	10-05-2016
5	Mailed Resolution of Intention to assessed businesses	No More than 7 Days after Step 4	10-12-2016
6	Public Hearing	No Less than 45 days after Step 2, No Less than 20 Days After Step 4, and No More than 30 Days After Step 4	11-02-2016
7	Introduction of Ordinance Establishing District and Setting Levy	At Same City Council Meeting As Step 6	11-02-2016
8	Second Reading of Ordinance	At Next Meeting of City Council Following Step 7	11-16-2016
9	Adoption of Resolution Confirming Assessment	At Same City Council Meeting as Step 8	11-16-2016

The ordinance effective date would be December 16, 2016; the effective date of the first assessment would be January 1, 2017, in which the subject hotels would be responsible for the assessment.

While the City Council is taking no action on the ordinance establishing the district and setting the levy of assessments, the City Attorney has a preliminary draft of an ordinance for review by the City Council and attached for reference.

There are approximately 80 small hotels in Palm Springs with 49 rooms or less, and the small hotels believe they are at a marketing disadvantage because they do not have the same marketing infrastructure of larger, branded hotels. Most small hotels don't have international marketing budgets, global call centers, local and national sales forces, international reservation systems, global brand recognition, etc.

SHOPS and DGTG membership includes approximately 80% of the small hotels located in the City of Palm Springs. Through a number of meetings, the two organizations have identified the formation of a TBID with a 1% assessment on room revenue as an appropriate funding source for increased marketing efforts.

SHOPS and DGTC have asked that the PSBOT work with them to administer the programs funded through the assessment. This would facilitate the coordination with all existing efforts and take advantage of the staffing and infrastructure that is already in place. The small hotels would form a marketing committee which would serve as the advisory body for the TBID. They would work with the PSBOT to develop and implement programs specific to their needs.

FISCAL IMPACT:

Based upon the current assessment information, the assessment will generate approximately \$325,000 per year, restricted funds, for the specific purpose of the TBID.

The City would incur costs to establish the TBID, including mailing, hearings, notifications, related staff and research time. Additionally, each year the TBID will incur costs to annually renew the assessment.

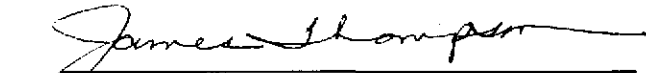
Dependent upon the final terms of the TBID, if approved, the TBID will require collection, distribution, audit, annual report preparation, and City Staff administration.

All administrative Staff time and costs may be reimbursed from the proceeds of the assessment. Staff will estimate all costs and present to the City Council, should the City Council direct Staff to continue the proceedings.

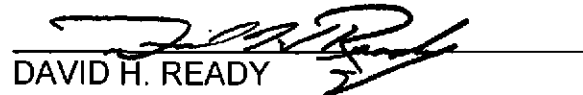
The Director of Finance estimated the cost to process monthly assessment returns and payments is \$40,000 to \$60,000 per year. In addition to the collection of monthly

assessment returns, annual administrative costs to prepare the notices and public hearings to renew the TBID each year will be approximately \$1,000 to 2,000.

Staff is recommending that all costs and administration costs be reimbursed from the TBID assessments, and not impact the General Fund.



JAMES THOMPSON
Chief of Staff/City Clerk



DAVID H. READY
City Manager

Attachments:

- Proposed Resolution Initiating Proceedings
- Sample ordinance establishing the District

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, INITIATING PROCEEDINGS TO ESTABLISH A PALM SPRINGS SMALL HOTEL TOURISM BUSINESS IMPROVEMENT DISTRICT PURSUANT TO THE PARKING AND IMPROVEMENT LAW OF 1989.

WHEREAS, the Small Hotels of Palm Springs (SHOPS) and the Desert Gay Tourism Guild (DGTG) have requested that the City of Palm Springs establish a Tourism Business Improvement District ("the TBID") to collect assessments on certain small hotel and motels business operators to be used for marketing activities dedicated to small hotels; and

WHEREAS, numerous California cities have successfully established TBIDs in their communities; and

WHEREAS, the City Council supports the initiation of a study to consider the initiation of such an assessment district.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF PALM SPRINGS HEREBY RESOLVES AS FOLLOWS:

SECTION 1. An advisory body is hereby created referred as the "Small Hotel TBID Advisory Board," which shall study and advise the City Council as to the feasibility of establishing an assessment district affecting small hotels/motels pursuant to the procedures set forth in Streets and Highways Code Sections 36500 et seq.

SECTION 2. This Small Hotel TBID Advisory Board shall prepare an annual report for the assessment district, when it is established.

SECTION 3. The City Council further directs that the City of Palm Springs City Council shall conduct a public meeting on Wednesday, October 5, 2016, at 6:00 p.m., and a public hearing be held on Wednesday, November 2, 2016, at the City of Palm Springs Council Chamber, 3200 E. Tahquitz Canyon Way, Palm Springs, to further discuss and consider the advisability of establishing such a Tourism Business Improvement District.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 7TH DAY OF SEPTEMBER, 2016.

DAVID H. READY, CITY MANAGER

ATTEST:

JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on the 7th day of September, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, CITY CLERK
City of Palm Springs, California

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA,
ESTABLISHING THE PALM SPRINGS SMALL HOTEL SMALL HOTEL
TOURISM BUSINESS IMPROVEMENT DISTRICT.

The City Council of the City of Palm Springs hereby ordains as follows:

Section 1. Code Amendment.

Chapter 5.83, entitled "Establishment of the Palm Springs Small Hotel Small Hotel Tourism Business Improvement District", is hereby added to Title 5 "Business Regulations" of the Municipal Code to read as follows:

"Chapter 5.83. Establishment of the Palm Springs Small Hotel Small Hotel Tourism Business Improvement District.

5.83.010 – Chapter title.

This chapter shall be known as the Palm Springs Small Hotel Small Hotel Tourism Business Improvement District.

5.83.020 - Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. "Assessment" means the assessment authorized by this chapter.
- B. "Authorized activities" means the activities authorized to be provided in connection with the district, as set forth in this chapter.
- C. "District" means the Palm Springs Small Hotel Tourism Business Improvement District established by this chapter.
- D. "Fiscal year" means the period beginning July 1 of each calendar year and ending June 30 of the following calendar year, except that the fiscal year ending June 30, 2003 shall begin on the later of the effective date of this chapter or March 5, 2003.
- E. "Gross occupancy revenue" means the total rent received from transients by a hotel and motel business.
- F. "Hotel and motel business" means any operator of a hotel other than an operator of a hotel that is owned by a nonprofit corporation and operated as an adjunct to a charitable or educational activity.
- G. "Law" means the Parking and Business Improvement Area Law of 1989, being Sections 36500 and following of the California Streets and Highways Code.
- H. "Transient occupancy tax" means the tax imposed by the city pursuant to section ___ of this code.

5.83.030 - District established.

A parking and business improvement area designated as the "Palm Springs Small Hotel Tourism Business Improvement District" is hereby created and established pursuant to the law.

5.83.040 - Boundaries.

The boundaries of the district are the city limits of the city of Palm Springs

5.83.050 - Activities.

The following activities are authorized to be provided in connection with the district: (i) the promotion of tourism within the district; (ii) the promotion of public events which benefit hotel and motel businesses operating in the district; (iii) furnishing of music in any public place in the district; and (iv) activities which benefit hotel and motel businesses located and operating in the district. The primary purpose of these activities is to promote tourism within the district.

5.83.060 - Assessment.

Except where funds are otherwise available, an assessment shall be levied annually to pay for all authorized activities within the district. The assessment shall be in addition to any other assessments, fees, charges or taxes imposed by the city.

5.83.070 - Assessment—Businesses subject to assessment.

The assessment will be levied against small hotel with 49 rooms or less in the city. No other business shall be subject to the assessment.

5.83.080 - Assessment—New businesses.

Small hotel and motel businesses as defined herein established in the district after the beginning of any fiscal year shall not be exempt from the levy of the assessment for that fiscal year but shall instead be subject to the assessment.

5.83.090 - Assessment—Basis and rate.

The assessment will be calculated as a percentage of each day's gross occupancy revenue. The rate of the assessment effective in any fiscal year shall be set by resolution of the city council adopted pursuant to Section 36535 of the law, and shall not exceed one percent (1%).

5.83.100 - Assessment—Collection.

The assessment calculated based on any day's gross occupancy revenues shall be paid to the city no later than the date on which the small hotel and motel business is required, pursuant to Section _____ of this code, to remit to the city the transient occupancy tax collected by the hotel and motel business on that day.

5.83.110 - Assessment—Penalties and interest.

Any small hotel and motel business failing to timely make payment to the city of the assessment shall be subject to the same penalties and interest thereon as set forth in section _____ of this code for failure to timely remit to the city transient occupancy tax payments collected by the hotel and motel business.

5.83.120 - Assessment—Debt to city.

The amount of assessment, penalty and interest imposed by the provisions of this chapter shall be deemed a debt to the city. An action may be commenced in any court of competent jurisdiction in the name of the city for the amount of such debt. The conviction and punishment of any person for failure to

comply with the provisions of this chapter shall not relieve such person from paying any assessment, penalty or interest due and unpaid at the time of such conviction nor shall payment prevent prosecution of a violation of any of the provisions of this chapter. All remedies shall be cumulative, and the use of one or more remedies by the city to enforce this chapter shall not bar the use of any other remedy.

5.83.130 - Assessment—Election to recover from transient.

The assessment is levied upon each hotel and motel business subject to the assessment, and each such business shall be solely responsible for paying all assessments when due. Without disturbance of the foregoing, a hotel or motel business may elect to recover some or all of the amount of the assessment from transients owning rent to the hotel or motel business. The amount to be recovered from any transient may not exceed the amount of rent owed by that transient to the hotel and motel business, multiplied by the then effective rate of the assessment. The amount recovered shall be identified or itemized (separately or in conjunction with the amount of transient occupancy tax owned by that transient) on a document provided to the transient. Assessments levied on hotel and motel businesses pursuant to this chapter and recovered from transients pursuant to this section are not considered "rent" for the purposes of Section 4.44.020 of this code.

5.83.140 - Special fund.

There is created a special fund designated as "Palm Springs Small Hotel Tourism Business Improvement District fund" into which all revenue derived from assessments levied pursuant to this chapter shall be placed, and such funds shall be used only for the purposes specified in this chapter. This fund shall be subject to an annual independent audit.

5.83.150 - Use of revenues.

Revenues from the levy of the assessment may be used only for authorized activities, and shall not be used for activities outside of the district.

5.83.160 - Contracting of funds.

The city may contract with a separate public or private agency to administer the authorized activities. Any agency that holds funds in trust for purposes related to the contract shall, at no expense to the city, provide an annual independent audit report by a certified public accountant of these funds. The audit may be funded from assessment proceeds as part of the general administration of the district. At all times the city shall reserve full rights of accounting of these funds.

5.83.170 - Amendments.

Small Hotel and motel businesses within the district shall be subject to any amendments to the law.

5.83.180 - Recordkeeping and inspections.

It shall be the duty of every hotel and motel business to keep all records as may be necessary to determine the amount of assessment due hereunder and shall preserve the same for a period of 4 years. The tax administrator shall have the right to inspect such records at all reasonable times.

The finance director shall determine the mode and method of recordkeeping required to assist the tax administrator to perform the duties required of him under this section. Any audit which must be performed to secure compliance with the terms of this section is to be performed in the city. If for any reason the audit cannot be performed in the city, the hotel and motel business shall reimburse the city for the actual cost of all transportation, lodging, meals, travel time and other incidental costs reasonably incurred by the city in conducting the audit."