



CITY COUNCIL STAFF REPORT

DATE: May 27, 2009

CONSENT CALENDAR

SUBJECT: APPROVING TERMS OF AN AMENDMENT TO THE PALM SPRINGS DESERT RESORT COMMUNITIES CONVENTION AND VISITORS AUTHORITY JOINT POWERS AGREEMENT RELATING TO THE MEMBERSHIP OF THE HOSPITALITY INDUSTRY AND BUSINESS COUNCIL

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

RECOMMENDATION:

- 1) Approve terms of Amendment No. 2 to Agreement No. A2660 with the Palm Springs Desert Resort Communities Convention and Visitors Authority Joint Powers Agreement; and
- 2) Authorize the City Manager to execute the all documents related to this amendment in a form approved by the City Attorney.

STAFF ANALYSIS:

Pursuant to the current provisions of the Joint Powers Agreement for the Palm Springs Desert Resort Convention and Visitors Authority, the Executive Committee appoints 17 persons to serve on the "Hospitality Industry and Business Council," an advisory body to the Executive Committee. The HIBC does not have any legal status except as provided in the JPA.

The Authority desires to amend the JPA to allow the HIBC to assume a management role in the Authority and to expand its membership. The ultimate goal is that the HIBC will incorporate as a private non-profit corporation and serve as an advisory and management role to the Authority and an advisory body to the County Business Improvement District. The Authority would appoint the initial membership of the HIBC for the purpose of completing the incorporation process and organizing itself. Once organized, the the HIBC would be a self-sustaining non-profit corporation with full authority under its bylaws to add members to the entity and to perform . All members of the HIBC would be eligible to participate in the activities of the HIBC in its relationship to the Authority. The express terms of the Articles of Incorporation of the HIBC provides that the purpose of HIBC "is to assist the . . . Authority in implementing the terms of the

Improvement District currently in effect.” (A copy fo the draft Articles of Incorporation are attached for the Council’s reference.) The proposed amendments to the JPA are intended to recognize this transformation of the HIBC.
The proposed amendments are as follows:

1. The definition of “Hospitality Industry and Business Council” in Article 1 of the JPA currently provides:

“Hospitality Industry and Business Council. An advisory body comprised of 17 private or associate members appointed by the Executive Committee.”

This definition would be amended to read:

“Hospitality Industry and Business Council. A managing body, Hospitality Industry and Business Council, Inc., a California corporation.”

2. The last sentence in the first paragraph of Article IX currently provides:

“The Executive Committee shall appoint a Hospitality Industry and Business Council comprised of 17 private and associate members for three year staggered terms.”

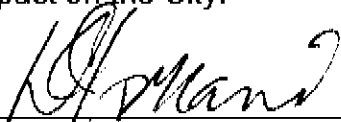
The sentence would be amended to read:

“The Executive Committee shall appoint as a managing body the Hospitality Industry and Business Council, Inc.”

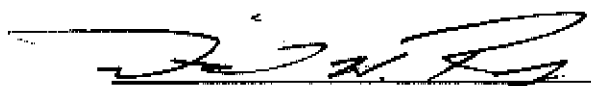
The amendment to the JPA will require the affirmative vote of 6 or more of the member cities to the JPA.

FISCAL IMPACT

It is not anticipated that the approval of this amendment will have any direct fiscal impact on the City.



Douglas Holland, City Attorney



David H. Ready, City Manager

Attachment: Draft Articles of Incorporation of the HIBC

ARTICLES OF INCORPORATION

OF

HOSPITALITY INDUSTRY AND BUSINESS COUNCIL, INC. A California Nonprofit Mutual Benefit Corporation

I

The name of this corporation is **HOSPITALITY INDUSTRY AND BUSINESS COUNCIL, INC.**

II

A. This corporation is a nonprofit mutual benefit corporation and is organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation is to assist the Palm Springs Desert Resort Communities Convention and Visitors Authority ("Authority") in implementing the terms of the Joint Powers Agreement between the Authority and its members and to assist the Authority in implementing the Business Improvement District currently in effect.

III

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation

IV

The name and address in California of the corporation's initial agent for service of process is: Samuel Crowe, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

V

A. No substantial part of the activities of this corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in

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Section 501(h) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, and this corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for public office, except as provided in Section 501(h) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

B. All corporate property is irrevocably dedicated to the purposes set forth in Article II above. No part of the net earnings of this corporation shall inure to the benefit of any of its directors, trustees, officers, private shareholders or members, or to individuals.

C. On the winding up and dissolution of this corporation, after paying or adequately providing for the debts, obligations, and liabilities of the corporation, the remaining assets of this corporation shall be distributed to such organization (or organizations) organized and operated exclusively for charitable and educational purposes, which has established its tax-exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

VI

To the fullest extent permitted by law, this corporation shall indemnify its directors, officers, employees and other persons described in Section 7237(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements, and any other amounts actually and reasonably incurred by them in connection with any proceeding, as that term is used in Section 7237(a), and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that Section. "Expenses" as used in this Article, shall have the same meaning as in Section 7237(a) of the California Corporations Code.

To the fullest extent permitted by law and except as otherwise determined by the Board of Directors of the corporation in a specific instance, expenses incurred by a person seeking indemnification under this Article, in defending any proceeding covered by this Article, shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

Incorporator

AMENDED AND RESTATED
BYLAWS OF
PALM SPRINGS DESERT RESORT COMMUNITIES CONVENTION AND
VISITORS AUTHORITY
(formerly Palm Springs Desert Resorts Convention and Visitors Authority)
(Amended _____, 2009)

Section 1: PURPOSE

To jointly encourage and engage in such other activities as might be necessary to enhance, to the greatest extent possible, all aspects of the hospitality, convention and tourism industry in the Coachella Valley and to attract visitors to the area from a world-wide market, all to the benefit of the member organizations and their citizens.

Section 2: EXECUTIVE COMMITTEE

- A. Officers – Chairman and Vice Chairman are elected annually in December for the following Calendar year.
- B. Duties:
 - 1. Manage affairs and evaluate performance of Joint Powers Authority
 - 2. Hire President
 - 3. Authorize contracts for service
 - 4. Adopt Budget
- C. Chairman appoints subcommittees
- D. Membership Qualifications:

Voting members are elected/appointed members from active public organizations that have not given notice to withdraw. Each active public member appoints one elected official as the designated delegate and a second elected official as an alternate. The County appoints one elected official as the designated delegate and either a second elected official or a senior staff member as the alternate member. City Managers are ex-officio members. Three ex-officio members are appointed by HIBC chairman from Hospitality and Business Council for one year terms.

Section 3: TECHNICAL ADVISORY COMMITTEE

- A. Officers The City Manager representative shall be automatically named Chair of Technical Advisory Committee (TAC) upon selection of JPA Executive Committee Chair as selected in December for the following Calendar year.

- B. Duties – Advise Executive Committee on all matters pertaining to Joint Powers Authority (JPA).
- C. Membership Qualifications – City Managers/Administrators from active public agencies.

Section 4: HOSPITALITY INDUSTRY AND BUSINESS COUNCIL (HIBC)

A. Members

- 1. Seventeen (17) appointed by Executive Committee
- 2. Widespread hospitality Industry/Business Community. Balanced representation from Active Public Members

The following categories serve as a guideline:

Members/Category

- 2 – Hotels with less than 100 rooms
- 3 – Hotels between 101-300 rooms
- 4 – Hotels with more than 301 rooms
- 7 – Business/Attractions Community

(Retailers, restaurants, attractions, banking, finance, transportation, air carriers, developers, Chambers of Commerce, etc.)

- 1 – At Large

B. Terms

Appointed in December for terms beginning January 1. Three years staggered serve at pleasure of Executive Committee. Two-term maximum, majority vote of Executive Committee to appoint and 2/3 vote of Executive Committee to remove. In the event of a delayed appointment, existing HIBC members serve until replaced.

C. Duties

- 1. Develop annual budget, marketing plan, and other related activities for submission to Executive Committee for approval.
- 2. Develop measurable performance criteria to evaluate CVA performance. (Beyond Transient Occupancy Tax, to include room nights booked, lead generation, cooperative advertising, membership involvement and other appropriate indicators).

3. Develop dues structure for private and Associate Members to be submitted to Executive Committee.
4. Meet monthly with President and staff to review performance, revenues and expenditures.
5. Approve monthly financial reports for distribution to Executive Committee.
6. Authorize minor adjustments to the budget within CVA activities (i.e., marketing program, sales program, advertising program). Budget adjustments between major categories requires Executive Committee approval.
7. Chairman of HIBC appoints subcommittees as necessary.
8. HIBC members elect Chairman, Vice Chairman and Secretary annually, in December, for following Calendar year.
9. Review, comment and submit contracts for professional services to the Executive Committee for approval.
10. Conduct meetings in accordance with the Brown Act.
11. File Conflict of Interest statements. Disclose financial interests. Disqualify from participation in decision which may affect Hospitality Industry and Business Council members' or their employees' economic interest.
12. Chairman is an ex-officio member of Executive Committee, attends all Executive Committee meetings (including closed sessions). Chairman may delegate to Vice Chairman. In addition, Hospitality Industry and Business Council Chairman appoints two additional members to serve one year, ex-officio terms on Executive Committee.
13. Hospitality Industry and Business Council members serve without compensation during any term served, including one year following last term of service.
14. Members who miss more than two HIBC meetings in a row or who miss 50% or more of the regularly scheduled HIBC meetings during any 12 month period shall be deemed to have resigned.

D. Nominating Committee, Marketing Committee, Budget Committee, other ad hoc committees.

1. Members:

Appointed by Hospitality Industry and Business Council Chairman from HIBC and Palms Springs Desert Resort Communities Convention and Visitors Authority membership. HIBC officers are also ex-officio members of all committees.

2. Terms:

One year, serve at pleasure of Chairman of Hospitality Industry and Business Council appointed by HIBC Chairman in December each year.

3. Duties:

- a) Nominating Committee meets as necessary. Recommends to HIBC for approval and submission to the Executive Committee, individuals to serve on Hospitality Industry and Business Council. Nominates officers of HIBC.
- b) Marketing Committee meets at least annually. Recommends marketing programs for following calendar year.
- c) Budget Committee meets as necessary. Prepares and monitors budget and performance indicators.

4. Membership Qualifications: When located in Coachella Valley, members represent business entities within boundaries of active members' agencies.

5. Other ad hoc Committees:

- a) Other HIBC committees are appointed by Chairman of Hospitality Industry and Business Council.
- b) Other JPA Executive Committees are appointed by Chairman of JPA Executive Committee.

E. Business Improvement District (Tourism Bid). By Ordinance #883, the County of Riverside has established a Business Improvement District for the purpose of promoting tourism by providing for a levying or annual assessment within the boundaries of the Tourism BID territory to fund activities related to tourism. This section designates the Hospitality Industry and Business Council of the Palm Springs Desert Resort Communities Convention and Visitors Authority to serve as the Advisory Board for the Tourism BID. In its capacity as the Advisory Board the HIBC shall:

1. Review and make any recommendations regarding the operations of the Tourism BID.
2. Review and recommend all expenditures of revenues derived from the levy of assessments derived from the Tourism BID which shall be within the policy guidelines established by the Board of Supervisors of Riverside County.
3. Annually present a report to the Board of Supervisors of Riverside County for their approval which shall include a description of the program activities to be implemented with the Tourism BID and an estimate of expenditures related thereto.

4. Submit an annual report to the Board of Supervisors of Riverside County outlining the previous year's revenues and expenses which shall include (a) any proposed changes to the Tourism BID boundaries and (b) the amount of any contributions made from sources other than the assessment levied pursuant to the Tourism BID.
5. Exercise such other duties as may be directed from time to time by the Board of Supervisors of Riverside County.
6. Establish an annual budget for the use of Tourism BID funds and approve any modifications thereto.
7. Establish an annual budget for the use of funds contributed to the Tourism BID by hotels or other establishments not within the Tourism BID territory.

Section 5: PERSONNEL COMMITTEE

A. Members/Category:

Two (2) – Chairman of Executive Committee and one other Executive Committee member appointed by Chairman of Executive Committee

One (1) – Chairman of Hospitality Industry and Business Council

B. Duties:

1. Conduct annual written review of President performance within 30 days of close and report to Executive Committee at their next regularly scheduled meeting.
2. Advise Executive Committee on personnel matters.
3. Review CVA Employee Benefit Package with the aid of the Technical Advisory Committee (TAC) Chairman.

Section 6: MEMBERSHIP QUALIFICATIONS

A. Private Members:

Non-government members whose place of business is within the jurisdiction of an active public member.

B. Associate Members:

Non-government member whose place of business is outside the Coachella Valley.

C. Active Public Member:

A public agency, signatory to JPA, who has not given notice of withdrawal.

D. Inactive Public Member:

A public agency, signatory to JPA, who has given notice of withdrawal.

Section 7: MEETINGS

A. Annual Membership Meeting:

At least once a year, during first quarter of Calendar year, to report to total membership (public/private) the previous year's accomplishments and the future operation and marketing plans.

B. Executive Committee:

At least quarterly, or as deemed necessary, time and place to be established. The Chairman or a majority of the Executive Committee may call a meeting.

C. Hospitality Industry and Business Council:

At least one meeting per quarter, but not less than nine in a 12-month period.

D. Other Committees -- As needed.

Section 8: QUORUM

A. A majority of current membership of each committee shall constitute a quorum.

B. All action of each committee shall be by majority vote of those present.

Section 9: PRESIDENT

A. Professional Manager hired by Executive Committee to manage affairs of JPA.

B. Develop and administer plans and programs for achieving visitor industry objectives. Develop and maintain key relations in the tourism and convention industry in order to assure effective advertising, public relations, promotions and direct sales of the Palm Springs Desert Resorts area for exploitation of the member cities as a visitor and convention destination.

Section 10: AMENDMENTS

Bylaws may be amended by majority vote of the Executive Committee.

Section 11: WARRANTS AND DEMANDS

A system of warrants and demand payments will be established. Monthly statements of warrants and demands shall be submitted to Executive Committee for approval and ratification.