

# City of Los Angeles

CALIFORNIA



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June 11, 2015

Honorable Members of the City Council  
City Hall, Room 395  
200 North Spring Street  
Los Angeles, California 90012

Council Districts 1-15

REGARDING: LOS ANGELES TOURISM MARKETING DISTRICT

Honorable Members:

The City Clerk has received materials relative to the formation of a proposed business improvement district to be called the Los Angeles Tourism Marketing District ("District"). The District would be formed pursuant to the provisions of the Property and Business Improvement District Law of 1994 (Section 36600 et seq., Streets and Highways Code, State of California).

This report shall serve as the Preliminary Report of the City Clerk. Attached to this report are: 1) the Management District Plan, which details the improvements and activities to be provided and serves as the framing document for the proposed District; 2) the Engineer's Report, which supports the determination of specific benefits; and 3) a draft Ordinance of Intention, approved as to form and legality by the City Attorney's Office.

## BACKGROUND

The District is being established in accordance with the provisions of the Property and Business Improvement District Law of 1994 (Section 36600 et seq., Streets and Highways Code, State of California) ("State Law"), which allows for the establishment of a business improvement district in which operations would be supported by revenue collected from lodging businesses (as defined in the attached Management District Plan) with fifty (50) rooms or more within the boundaries of the proposed District.

The proposed District's programs include, but are not limited to the following: marketing, sales, administration, contingency and renewal to be funded by an annual assessment of 1.5% of Gross Room Rental Revenue (as defined in the attached Management District Plan). The proposed District will begin April 1, 2016 and will continue for nine (9) years nine (9) months and end on December 31, 2025.

### PRELIMINARY PETITIONS

In order to proceed with the establishment process under the State Law, the proponent group needed to secure written support for the project in the form of petitions signed by lodging business owners (as defined in the attached Management District Plan) who will pay more than 50 percent of the assessments proposed to be levied. The consulting firm for the proposed District, Civitas, has presented to the Office of the City Clerk a set of petitions that support the formation of the proposed District. The Office of the City Clerk, using resources available through the Office of Finance, verified the accuracy of the assessment calculations.

The petitions received indicate affirmative financial support of the project in an amount equivalent to \$9,403,500.00. This represents 62.69 percent (62.69%) of the total proposed District's projected first nine (9) month operating period revenue of \$15,000,000. Because the more than 50 percent threshold of preliminary support has been achieved, the formal business improvement district establishment process, including a public meeting and a public hearing before the City Council, may be initiated.

### PROPOSED DISTRICT BOUNDARIES

The boundaries of the proposed District are as detailed in the Management District Plan. A general description of the exterior boundaries and parcels to be assessed in the proposed District is as follows: All lodging businesses with fifty (50) rooms or more, existing and in the future for the duration of this District within the geographic boundaries of the City of Los Angeles.

The boundaries of the proposed District will overlap the boundaries of other established business improvement districts that may also contain lodging businesses with fifty (50) rooms or more in the City of Los Angeles. State Law does not prohibit the boundaries of a district created pursuant to State Law to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). The benefits and services provided by the proposed District to lodging businesses with fifty (50) rooms or more within established business improvement districts in the City of Los Angeles are separate and distinct from the benefits and services provided by other business improvement districts.

The Management District Plan lists 182 lodging businesses subject to assessment in the proposed District. The map included in the District's Management District Plan gives sufficient detail to a map that identifies the district boundaries in sufficient detail to allow lodging business owners to reasonably determine whether a lodging business is located within the district boundaries.

### DISTRICT ESTABLISHMENT

For establishment of the proposed District to take place, City Council must find that: 1) The proposed District is eligible for establishment pursuant to Section 36600 et seq. of the California Streets and Highways Code; 2) The lodging businesses within the area of the

proposed District will benefit by the improvements and activities funded by the assessments proposed to be levied; 3) The revenue from the levy of assessments within the District shall not be used to provide improvements or activities outside the District or for any purpose other than the purposes specified in the Management District Plan; 4) The assessment proposed to be imposed on each lodging business does not exceed the reasonable cost of the proportional benefit conferred on lodging business; 5) The benefit of this District is a special benefit and exceeds the level of services provided by the City; and 6) This specific assessment for special benefits falls under the category 1 exemption of Proposition 26.

City Council must also adopt an Ordinance of Intention which describes the proposed District and outlines the legal requirements for establishing a District pursuant to Section 36600 et seq. of the California Streets and Highways Code. Establishment of the District is subject to holding one public meeting and one public hearing, of which the dates, times, and location will be both 1) stated in the ordinance, and 2) mailed to the lodging business owners within the proposed District boundaries pursuant to Section 54954.6 of the California Government Code.

#### EXEMPTION UNDER PROPOSITION 26

On November 2, 2010, voters in the State of California passed Proposition 26, which broadened the definition of taxes and which require approval by two-thirds of each house of the Legislature or by local voter approval. However, Proposition 26 provides for exemptions.

Under Proposition 26, assessments for specific benefits are not defined as taxes and are exempt under Article XIII C §1(e) which states "A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege". For the City Council to find that the Los Angeles Tourism Marketing District is exempt from Proposition 26, it must find that 1) the assessment dollars are used in a manner that creates a clear and direct link between the marketing service provided and the benefit to the assessed lodging business; 2) no business other than the assessed lodging business will benefit from the assessment and attendant marketing services; and 3) the assessment imposed does not exceed the reasonable cost to the local government of conferring the benefit.

The assessments for the Los Angeles Tourism Marketing District are used to provide marketing, sales, and administration which directly and specially benefits lodging businesses with 50 or more rooms. These services are funded solely by the assessments collected and are provided only to the lodging businesses which pay the assessments. No assessment funded services are provided to lodging businesses which do not pay the assessments or to lodging business located outside of the District boundaries. The assessment dollars collected fund the budget to provide these services within the District boundaries for the purpose of increasing room night sales of the assessed lodging businesses. Such services cannot be provided without charging the assessment. Furthermore, the assessments are calculated based on the reasonable cost of providing the services to the payor and thus, do not exceed the reasonable cost to the local government in conferring the benefit.

Government Code section 53758 was recently enacted to, among other things, clarify the definition of specific benefit. The discussion provided herein regarding the specific benefit to payors is consistent with Government Code section 53758.

### PROPOSED IMPROVEMENTS AND PROGRAMS

The District is expected to generate \$20,000,000 annually over a nine (9) year nine (9) month period. The revenue will be utilized to fund the proposed District's improvements and activities that include, but are not limited to: marketing, sales, administration, contingency and renewal. The District's assessment is proposed to be implemented beginning April 1, 2016. The proposed District's budgeted services will be pro-rated for the first year if the assessment is not implemented by April 1, 2016. The benefits and services provided by the proposed District to lodging businesses with fifty (50) rooms or more within established business improvement districts in the City of Los Angeles are separate and distinct from the benefits and services provided by other business improvement districts.

### ASSESSMENT FORMULA AND DISBURSEMENTS

The District's proposed assessment formula is based upon an allocation of program costs. For the duration of the District, the annual assessment rate will be 1.5% of Gross Room Rental Revenue for Transient stays of less than 31 days for lodging businesses (as described in the Management District Plan). The assessment rate may increase to a maximum of three percent (3%) of gross room rental revenue within the 9 year and 9 month term. The increase in any year shall not exceed one-half of one percent (0.5%) of gross room rental revenue as detailed in the Management District Plan. The assessment rate may also be decreased, but shall not drop below one and one half percent (1.5%) of gross room rental revenue.

The City Clerk, or its designee, will collect the assessment from the lodging businesses as described in the Management District Plan. Penalties for delinquent assessments will be collected from the lodging businesses as described in the Management District Plan. Assessment revenue will be held in a trust fund by the City and will be disbursed through installments to the District to support authorized District improvements and activities.

### AUDITING

The City Clerk, or its designee, shall be allowed to review or audit the financial records of the owners' association and all lodging businesses included in the District as necessary to ensure accurate collection and expenditure of assessments. The City Clerk requests authority to release a Request For Proposals for auditing services in an amount not to exceed \$172,000 and authority to enter into a contract with selected auditors and execute task orders as needed for auditing purposes of the hotels and other business improvement districts.

### CONTRACTING WITH OWNERS' ASSOCIATION

Upon the establishment of the District, State law requires that the City enter into an agreement with an Owners' Association for the administration of the District. City policy dictates that

competitive bidding requirements are to be met when contracting. However, Charter section 371(e)(10) provides an exception to the competitive bidding requirements, and states, in relevant part, that the competitive bidding process does not apply to contracts “where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements.”

The Los Angeles Tourism Marketing District Corporation has administered the Los Angeles Tourism Marketing District Business Improvement District since the District was originally established in 2011, overseeing expenditures, managing and implementing the District's improvements and activities. The Los Angeles Tourism Marketing District Corporation possesses the unique knowledge and expertise relative to the administration of the District and has a vested interest in the success of the District during its limited term. Therefore, it would be impractical, not advantageous and undesirable to comply with the competitive bidding requirements or to select another entity to administer the District, if the District is renewed.

#### ASSESSABLE CITY LODGING BUSINESSES

There are no City-owned lodging businesses within the boundaries of the proposed District and therefore no assessments to be paid by the City.

#### FISCAL IMPACT

There are no City-owned lodging businesses within the boundaries of the proposed District to be assessed and therefore no impact on the General Fund.

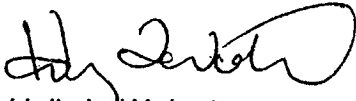
#### RECOMMENDATIONS

1. FIND that the proposed District is eligible for establishment pursuant to Section 36600 et seq. of the California Streets and Highways Code.
2. FIND that the assessments for the proposed business based District are not taxes and that the District qualifies for exemption from Proposition 26 under exemption 1 of Article XIII C §1(e).
3. FIND that the petitions submitted on behalf of the proponents of the proposed Los Angeles Tourism Marketing District are signed by lodging business owners who will pay more than fifty (50) percent of the assessments proposed to be levied.
4. FIND that the marketing of this District is a specific benefit for the lodging businesses with 50 rooms or more and exceeds the level of services provided by the City.
5. FIND that the assessment dollars are used in a manner that creates a clear and direct link between the marketing service provided and the benefit to the assessed lodging business.

6. FIND that no business other than the assessed lodging business will benefit from the assessment funded attendant marketing services and programs.
7. FIND that the assessment imposed does not exceed the reasonable cost to the local government of conferring the benefit.
8. FIND that in accordance with State Law and based on the facts and conclusions contained in the attached Management District Plan, the assessment levied on each lodging business shall not be used to provide improvements or activities outside the District or for any other purpose other than those described in the Management District Plan and does not exceed the reasonable cost of the proportional specific benefit conferred on that lodging business.
9. FIND that all lodging business with 50 rooms or more that will have a specific benefit conferred upon them by the improvements and activities provided and upon which an assessment would be imposed are those as identified in the Management District Plan and Engineer's Report.
10. FIND that in accordance with State Law, the benefits and services provided by the District to lodging businesses with fifty (50) rooms or more within established business improvement districts in the City of Los Angeles are separate and distinct from the benefits provided by other business improvement districts.
11. FIND that the City Clerk, or its designee, will collect the assessments.
12. FIND that the City Clerk, or its designee, shall be allowed to review or audit the financial records of the owners' association and all lodging businesses as necessary to ensure accurate collection and expenditure of the assessments.
13. FIND that the proposed improvements and activities are completely separate from the day to day operations of the City of Los Angeles.
14. ADOPT the Preliminary Report of the City Clerk.
15. ADOPT the attached Management District Plan.
16. ADOPT the attached Engineer's Report.
17. ADOPT the attached Ordinance of Intention to establish the Los Angeles Tourism Marketing District.
18. DIRECT the City Clerk to comply with the notice, protest, and hearing procedures prescribed in the California Government Code, Section 54954.6.

19. AUTHORIZE the City Clerk to release a Request For Proposals for auditing services; enter into a contract with the selected vendors and execute individual Task Orders as needed for auditing purposes of the hotels and other business improvement districts in an aggregate amount not to exceed \$172,000 for a three-year period.
20. REQUEST the City Attorney, with the assistance of the City Clerk, to prepare an enabling Ordinance establishing the Los Angeles Tourism Marketing District for City Council consideration at the conclusion of the required public hearing.
21. AUTHORIZE the City Clerk, upon establishment of the District, to prepare, execute and administer a contract between the City of Los Angeles and the Los Angeles Tourism Marketing District Corporation for the administration of the District's programs.

Sincerely,



Holly L. Wolcott  
City Clerk

HLW:GRA:MCP:RMH:rks

Attachments:

Draft Ordinance of Intention  
Management District Plan  
Engineer's Report