

RESOLUTION NO. 2016-034

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SANTA ANA TO ESTABLISH A HOTEL DEVELOPMENT  
INCENTIVE PROGRAM

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS  
FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines  
and declares as follows:

1. Santa Ana's proximity to the Anaheim resort district, the John Wayne Airport, and local amenities such as the Discovery Science Cube and the Bowers Museum makes it a desirable location to attract incoming tourists and visitors to Orange County. According to a study by PKF Hospitality Research consultant, the average occupancy rate for Orange County hotels is 78.3% and is indicative that additional capacity exists for the development of new hotels in this area.
2. Santa Ana will need to strategically position itself to accommodate new hotel development. By doing so, Santa Ana will have the potential to create new jobs, spur economic development, and enhance the City's revenue base. Currently, the City of Santa Ana does not have any four-star rated or AAA (American Automobile Association) four Diamond and above hotels. However, nine three-star rated hotels reside within City limits. All other hotels and motels within the City are rated from one to two-stars. A uniform rating system for star quality hotels in the United States does not exist. Several websites and travel guides use the star rating when ranking hotels. AAA has an independent rating system that many hotels have been rated by. The City recommends the use of both star and AAA diamond ratings for this incentive program.
3. The City currently imposes an 11% Hotel Visitors Tax (HVT) on hotel and motel guests. The purpose of this tax is to recover costs of governmental services associated with nonresidents of the City. Since fiscal year 2011-12, the City has experienced a 29 percent increase in HVT revenues and are projected to exceed \$9 million by year end 2015-16.
4. To spur the development of high quality hotels (four to five star rated or AAA Four Diamond or above), the City is recommending an economic incentive to close the funding gap in a proposed high quality hotel development. A feasibility analysis would be completed for the project, whereby a projection of operating performance is combined with project development cost in order to determine the funding gap. A financial firm

would be used for the feasibility analysis which would be funded by the developer.

5. The City would pay for the funding gap through the HVT incremental revenue over a period specified in each negotiated agreement. The City would use a percentage (50 percent) of new incremental HVT generated by the new development to fund the payments. Incremental HVT equals the amount of new HVT that the new hotel development generates from a baseline (Year 0). No upfront expenditures from the City would be required. Each hotel agreement will be brought forward to City Council for consideration.

Section 2. Based upon the information provided herein and at the hearing on this matter, the City Council of the City of Santa Ana hereby establishes the Hotel Development Incentive Program as follows:

1. **Definitions.** For the provisions of this Resolution, the following definitions shall apply:
  - a. **Brand** – the entity whose Flag is used to identify the Hotel.
  - b. **Executive Director** – the Executive Director of the Community Development Agency for the City of Santa Ana, or his/her designee.
  - c. **Flag** – the distinctive name of a Hotel that, by virtue of its distinctive name, is identified by specific physical and operational features so that guests are assured that they will receive a specified level of service and amenities wherever the property is located.
  - d. **Hotel** – any building with rooms or suites intended for an uninterrupted stay of no more than twenty-eight consecutive calendar days by guests for compensation, which was not operational at the time of adoption of this Resolution, and provides physical features and operational services that meet or exceed, as determined by the Executive Director acting in his/her sole and absolute discretion, a four to five star rating or criteria established for AAA Four Diamond or above Hotels by the American Automobile Association.
  - e. **Hotel Development Incentive Program** – the program set forth in this Resolution to encourage and incentivize the development, construction and operation of Hotels.
  - f. **Hotel Visitor's Tax (HVT) Rate** – The current rate of HVT, as applicable from time to time. The HVT Rate shall apply for the

calculation of any and all Incentive Payments.

- g. **Incentive Payments** – the payments made by the City to an Owner pursuant to an Operating Covenant Agreement and described in Section 4 hereof.
- h. **Labor Peace Agreement** – an enforceable agreement between a Hotel Owner or Operator and a labor organization, as defined by 29 U.S.C. §152(5), that represents, or seeks to represent, the Hotel's employees, both during construction and operation of the Hotel, and that contains provisions under which the labor organization for itself and its members agrees to refrain from engaging in any picketing, work stoppages, or any other economic interference with Hotel operations.
- i. **Open(s)(ing)(ed) for Business or Opening** – the day on which a Hotel opens for business to the general public.
- j. **Operating Covenant Agreement(s)** – the agreement(s) approved by the City Council described in Section 3 hereof.
- k. **Operating Period** – This will be negotiated in the Operating Covenant Agreement.
- l. **Operator** – franchisee, manager, lessee, or licensee with whom an Owner has a contract to operate the Hotel pursuant to a franchise, management, lease, or license arrangement.
- m. **Owner** – the person or entity that is the owner of a Hotel or a site upon which a Hotel is to be constructed, whether in the capacity of fee simple owner, lessee, sub-lessee, mortgagee in possession, licensee, franchisee, or any other capacity, or the assignee or designee of such Owner.
- n. **Prevailing Wage Statutes** – *Labor Code* Section 1770, et seq.
- o. **Responsible Contractor** – a construction contractor which pays all of its construction employees the prevailing wage in the area where the work is being performed; provides health insurance and a pension/retirement program for all construction employees; employs skilled and qualified journeyman, 60% of which have graduated from a California State approved joint labor/management apprenticeship program, and apprentices which are registered in a California State approved joint labor/management apprenticeship program; employs only journeyman and apprentices which have an OSHA 10 certification and have such other proper and current

licenses and/or certifications required under state and local laws; which has not been found to have violated any of the laws, rules and regulations enforced by the California State Contractors License Board or the Department of Industrial Relations within the last five (5) years; and, which has agreed to a good faith effort to hire 30% of its workforce from, first, in the City of Santa Ana, if the Contractor has not attained this percentage from Santa Ana residents, then second, residents from Orange County.

- p. **Site Control** – being the Owner of a site on which a Hotel is proposed.
  - q. **Temporary Closure** – a period of time, no longer than reasonably necessary for repairs, reconstruction or resolution of maintenance issues, but in no event longer than two hundred (200) days.
2. **Participation in the Hotel Development Incentive Program.** An Owner that wishes to participate in the Hotel Development Incentive Program must first submit the following to the Executive Director:
- a. Evidence of Site Control;
  - b. Description of development team, including, the development entity, the architect(s), interior designer, landscape architect, and other professional disciplines related to the construction and operation of the Hotel for the purposes of confirming that the project will be a Hotel when Opened for Business;
  - c. Conceptual operating plan and design of the Hotel for the purpose of confirming that the project will be a four to five star rated or AAA Four Diamond or above Hotel when Opened for Business;
  - d. Evidence of interest by a Brand, Flag, and Operator in operating a Hotel within the City; and,
  - e. Feasibility analysis completed for the project by a financial firm and funded by the Owner, whereby a projection of operating performance is combined with project development cost in order to determine the funding gap.

The Executive Director shall determine, acting in his/her sole and absolute discretion, the sufficiency of the submittals.

3. **Operating Covenant Agreement.** If, based on the information provided pursuant to Section 2 above, the Executive Director is satisfied that the Owner is likely to Open and operate a Hotel, then the Executive Director

may further decide in his/her discretion to negotiate an Operating Covenant Agreement with the Owner. Any Operating Covenant Agreement that may be negotiated by the Executive Director shall be subject to consideration by, and shall not be effective unless approved by, the City Council. In considering a proposed Operating Covenant Agreement, the City Council may approve, deny or modify such proposed agreement acting in its sole and absolute discretion, following compliance with all required and applicable laws, including, but not limited to, *Government Code Section 53083* and the *California Environmental Quality Act*. Nothing herein creates an obligation on the part of the City to negotiate and/or approve an Operating Covenant Agreement. The Operating Covenant Agreement will contain, among other items that the Executive Director may impose, the following:

- a. A recordable covenant by the Owner to operate and maintain the Hotel as a four to five star rated or AAA Four Diamond or above Hotel for not less than the Operating Period.
- b. An obligation on the part of the City to make Incentive Payments contingent upon compliance by the Owner with the Operating Covenant Agreement.
- c. An obligation on the part of the Owner to award construction and inspection contracts to be performed on the project only to Responsible Contractors which will comply with the Prevailing Wage Statutes.
- d. An obligation on the part of the Owner to use good faith efforts to contract with local subcontractors, suppliers and other businesses.
- e. An obligation on the part of the Owner to ensure that all journeymen and apprentices comply with all State labor laws and that the workforce on site meet a specific ratio of apprenticeship program graduates and of OSHA certified workers, along with the presence of at least one site safety manager with OSHA 30-hour certification.
- f. Indemnities by the Owner in favor of the City and related parties as to:
  - i. the condition of the site;
  - ii. litigation concerning entitlements and/or enforceability of the Operating Covenant Agreement; and
  - iii. Prevailing Wage Statutes.

- g. Agreement, assumption of risk and waiver by the Owner that, if the Operating Covenant Agreement is approved by the City prior to consideration by the City of any land use, entering into the Operating Covenant Agreement does not commit the City to consider or undertake acts or activities requiring subsequent independent exercise of discretion, including, but not limited to, the approval of any development proposal, including a Hotel project, or land use approval governing the site where the Hotel is proposed. The Owner shall agree that the City retains discretion on potential future actions to approve, deny, modify, and consider alternatives to a proposed project, as well as to impose adequate mitigation measures as may be required by the *California Environmental Quality Act*.
  - h. A covenant and agreement by the Owner for itself, its successors, assigns or designees, that during the term of the Operating Covenant Agreement the business and any of its employees shall not discriminate against any person on the basis of sex, marital status, race, color, religion, ancestry, national origin, physical handicap, sexual orientation, or domestic partnership status.
  - i. An acknowledgement by the parties that the only remedy for default is specific performance and that monetary damages are not available to the Owner for any City default.
4. **Incentive Payments and Required Actions upon Completion of Hotel.** Further Terms to be Included in the Operating Covenant Agreement:
- a. **Confirmation that the Hotel is Operating as a four to five star rated or AAA Four Diamond or above Hotel.** Upon completion of a Hotel with respect to which an Operating Covenant Agreement has been entered into, the Owner shall provide to the City, at Owner's sole cost and expense, an independent third party audit, by an auditor approved by the City, confirming that the Hotel is operating or will operate as a four to five star rated or AAA Four Diamond or above Hotel. The City shall approve or reject the results of such audit acting in its reasonable discretion.
  - b. **Incentive Payments for Hotel.** Upon the confirmation described in subsection a. of this section 4, the City shall pay Incentive Payments to an Owner of a Hotel, pursuant to an Operating Covenant Agreement, in an amount equal to fifty percent (50%) of the HVT collected and remitted to the City during the Operating Period based on the HVT Rate with respect to such Hotel.

- c. **Termination of Incentive Payments.** Incentive Payments shall terminate, and the Operating Covenant Agreement shall so provide, upon the expiration of the applicable Operating Period, or at such time as the Hotel ceases to operate as a four to five star rated or AAA Four Diamond or above Hotel for reasons other than Temporary Closure; provided that the Incentive Payments shall terminate upon any closure unless the Owner notifies the City, in writing, of any Temporary Closure within ten (10) days of the initial occurrence of the onset of such condition or conditions that cause such a Temporary Closure.
5. **Labor Peace Agreement.** For each Hotel covered by this Hotel Development Incentive Program in which the City participates financially and has a proprietary interest, the City shall require that the Hotel Owner or Operator execute a Labor Peace Agreement with any labor union that represents or seeks to represent employees of the Hotel, both during construction and operation of the Hotel. The City shall be deemed to participate financially and have proprietary interest in the Hotel project where the City both owns the site on which the Hotel is proposed, and the City Council determines that the City:
  - a. Through a lease of the real property that is owned by the City and used for the Hotel project, receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (b) and (c) of this subsection;
  - b. Receives ongoing revenue from the Hotel to repay loans provided by the City to assist the Hotel, including, without limitation, incremental tax revenues generated by the Hotel;
  - c. Receives ongoing revenue from the Hotel to pay debt service on bonds provided by the City to assist the Hotel, including, without limitation, incremental tax revenues generated by the Hotel;
  - d. Has significant assets at risk because it has agreed to underwrite or guarantee the development of the Hotel or loans related to the Hotel; or
  - e. Has a significant ongoing economic and non-regulatory interest at risk in the financial success of the Hotel that is likely to be adversely affected by labor-management conflict.

When a Labor Peace Agreement is required, evidence shall be presented to the City that the Owner or Operator has entered into a Labor Peace Agreement with any labor union that represents or seeks to represent

employees of the Hotel, both during construction and operation of the Hotel, meeting the requirements of this section, prior to entering into an Operating Covenant Agreement for a hotel project covered by this Section.

6. **No Pledge.** Provisions for the making of Incentive Payments pursuant to the Operating Covenant Agreement shall not be deemed to constitute a pledge of any particular funds by the City, but instead an obligation contingent upon the operation of a Hotel.
7. **Administrative Rules and Regulations.** Consistent with the intent and goals of this Hotel Development Incentive Program, the Executive Director may adopt administrative rules and regulations for implementation and furtherance of the requirements of this program.

Section 3. The City Council's decisions creating this Hotel Development Incentive Program are based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for Council Action dated November 3, 2015, and exhibits attached thereto; the Request for Council Action dated April 19, 2016, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

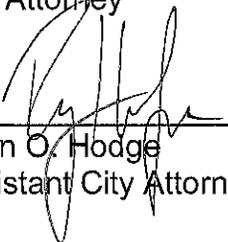
Section 4. The City Council hereby finds and determines that the establishment of the Hotel Development Incentive Program, by the adoption of this Resolution, is not subject to the *California Environmental Quality Act* of 1970, as amended (*Public Resources Code* Section 21000 et seq.), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the *State of California Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3)*, because it will not result in a direct or reasonably foreseeable physical change in the environment and is not a "project" as defined in Section 15378 of the *California Code of Regulations*.

Section 5. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this 7<sup>th</sup> day of June 2016.

  
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Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By:   
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Ryan O. Hodge  
Assistant City Attorney

AYES: Councilmembers: Amezcuca, Martinez, Benavides, Pulido, Reyna, Sarmiento, Tinajero (7)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: None (0)

#### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Maria D. Huizar, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2016-034 to be the original resolution adopted by the City Council of the City of Santa Ana on June 7, 2016.

Date: 6/14/2016

  
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Clerk of the Council  
City of Santa Ana