

ORDINANCE NO. 883
(AS AMENDED THROUGH 883.2)
AN ORDINANCE OF THE COUNTY OF RIVERSIDE ESTABLISHING THE
PALM SPRINGS DESERT RESORT COMMUNITIES TOURISM BUSINESS
IMPROVEMENT DISTRICT AND LEVYING ANNUAL ASSESSMENTS THEREIN

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. FINDINGS.

a. The California Legislature adopted the Parking and Business Improvement Area Law of 1989 (California Streets & Highways Code section 36500 et seq.) (the "Act") to authorize cities and counties to levy assessments on businesses in order to promote economic revitalization and tourism, to create jobs, attract new businesses and prevent erosion of business districts. Certain lodging businesses within the desert communities of the Coachella Valley have requested that the Board of Supervisors establish a business improvement district to promote tourism within the desert communities and to fund programs that benefit local hotel and motel businesses.

b. The cities of Cathedral City, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Springs, and Rancho Mirage have granted consent to the County of Riverside to include their cities within the proposed boundaries of the Tourism BID.

c. On September 30, 2008, the Board of Supervisors adopted Resolution Number 2008-442 entitled "A Resolution of the Board of Supervisors of the County of Riverside Declaring Its Intention to Establish the Palm Springs Desert Resort Communities Tourism Business Improvement District [the "Tourism BID"], Declaring Its Intention to Levy an Assessment for the Fiscal Year 2008-2009 on Certain Hotels and Motels Located Within the Proposed District, and Setting the Time and Place of a Public Meeting and Public Hearing and Giving Notice of Same" (the "Resolution of Intent").

d. At 9:00 a.m. on October 28, 2008, in the Board Chambers on the first floor of the County Administrative Center at 4080 Lemon Street in Riverside, the Board of Supervisors held a public meeting concerning the proposed establishment of the Tourism BID and the proposed levy of annual assessments. At 9:30 a.m. on November 18, 2008, in the Board Chambers on the first floor of the County Administrative Center at 4080 Lemon Street in Riverside, the Board of Supervisors held a public hearing concerning the proposed establishment of the Tourism BID and the proposed levy of annual assessments. At the public meeting and the public hearing the Board of Supervisors heard the testimony of all interested persons for or against the establishment of the Tourism BID, the extent of the boundaries of the Tourism BID, the furnishing of specific types of activities, and the authorization to levy annual assessments. At the public hearing, the Board of Supervisors also heard, considered, and overruled all protests against the establishment of the Tourism BID, the extent of the proposed boundary area of the Tourism BID, and the furnishing of proposed activities within the Tourism BID. At the conclusion of the public hearing the Board of Supervisors determined that no majority protest existed.

e. In February of 2010, the City of Palm Desert granted consent to the County of Riverside to include the City of Palm Desert within the boundaries of the Tourism BID.

f. On March 16, 2010, the Board of Supervisors adopted Resolution Number 2010-090 entitled "A Resolution of the Board of Supervisors of the County of Riverside Declaring Its Intention to Modify the Boundaries of the Palm Springs Desert

Resort Communities Tourism Business Improvement District to Include the City of Palm Desert Within the Boundaries of the District, Declaring Its Intention to Levy an Annual Assessment for Fiscal Year 2010 - 2011 on Certain Hotels and Motels Located Within the Boundaries of the District as Amended, and Setting the Time and Place of a Public Meeting and Public Hearing and Giving Notice of Same.

g. At 9:00 a.m. on May 4, 2010, in the Board Chambers on the first floor of the County Administrative Center at 4080 Lemon Street in Riverside, the Board of Supervisors held a public meeting concerning the intended modification of the Tourism BID boundaries and the intended levy of an annual assessment for fiscal year 2010-2011. At 9:30 a.m. on May 18, 2010, in the Board Chambers on the first floor of the County Administrative Center at 4080 Lemon Street in Riverside, the Board of Supervisors held a public hearing concerning the intended modification of the Tourism BID boundaries to include the City of Palm Desert within the Tourism BID and the intended levy of the fiscal year 2010-2011 assessment. At the public meeting and the public hearing, the Board of Supervisors heard the testimony of all interested persons for or against the intended Tourism BID boundary modification, the furnishing of specific types of activities, and the intended annual assessment levy. At the public hearing, the Board of Supervisors also heard, considered, and overruled all protests against the intended Tourism BID boundary modification, the furnishing of proposed activities, and the intended annual assessment levy. At the conclusion of the public hearing the Board of Supervisors determined that no majority protest existed.

h. The Board of Supervisors finds that establishing a business improvement district to be commonly known as the Palm Springs Desert Resort Communities Tourism Business Improvement District to promote tourism within the desert communities and to fund related programs will benefit the hotel and motel businesses within the desert communities. The hotel and motel businesses and property within the Tourism BID will be benefited by the activities to be funded by the assessments proposed to be levied. As businesses that benefit from tourist visits, hotels and motels may properly be assessed to promote tourism.

i. In 2008, pursuant to the Act, the Board of Supervisors appointed 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 2010, the Hospitality Industry and Business Council incorporated as "Hospitality Industry and Business Council, Inc." Hospitality Industry and Business Council, Inc. continues to serve as the advisory board of the Tourism BID. In addition, Hospitality Industry and Business Council, Inc. continues to manage the Palm Springs Desert Resort Communities Convention and Visitors Authority.

Section 2. PURPOSE. The purpose of this ordinance to establish the Palm Springs Desert Resort Communities Tourism Business Improvement District to promote tourism and to provide for the levying of annual assessments within the boundaries of the Tourism BID to fund activities related to tourism.

Section 3. AUTHORITY. This ordinance is adopted pursuant to California Streets and Highways Code section 36527 and the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code section 36500 et seq.).

Section 4. EXEMPTIONS. Only hotels and motels that are located within the boundaries of the Tourism BID and have fifty or more sleeping rooms are assessable businesses under this ordinance. Newly opened hotels and motels that have fifty (50) or more sleeping rooms and are located within the boundaries of the Tourism BID shall not be exempt from the levy of assessment pursuant to section 36531 of the Act. All other businesses within the boundaries of the Tourism BID are exempt from assessment under this ordinance.

Section 5. DEFINITIONS. As used in this ordinance, the following terms shall have the following meanings:

a. Act. "Act" shall mean the Parking and Business Improvement Area Law of 1989 (California Streets & Highways Code section 36500 et seq.) as it may be amended from time to time.

b. Activities. "Activities" shall mean those activities proposed to be funded by and through the annual levy of assessments on Assessable Hotels and Assessable Motels within the Tourism BID identified in the Resolution of Intent and in the annual report prepared by the Advisory Board and adopted by the Board of Supervisors. "Activities" include (without limitation) the following: marketing, advertising, and public relations; brochure development and distribution; promotion of public events which benefit businesses within the boundaries of the Tourism BID and which take place on or in public places within the boundaries of the Tourism BID; activities which benefit businesses located and operating within the boundaries of the Tourism BID, including but not limited to, downtown shopping and promotional programs; and any activity permitted under the Act that is included as a cost in an annual report approved by the Board of Supervisors.

c. Advisory Board. "Advisory Board" means Hospitality Industry and Business Council, Inc. (formerly known as the Hospitality Industry and Business Council of the Palm Springs Desert Resorts Convention and Visitors Authority).

d. Assessable Hotel. An "Assessable Hotel" is a hotel that is located within the boundaries of the Tourism BID and has fifty or more sleeping rooms, including, but not limited to, newly opened hotels that have fifty (50) or more sleeping rooms and are located within the boundaries of the Tourism BID.

e. Assessable Motel. An "Assessable Motel" is a motel that is located within the boundaries of the Tourism BID and has fifty or more sleeping rooms, including, but not limited to, newly opened motels that have fifty (50) or more sleeping rooms and are located within the boundaries of the Tourism BID.

f. Assessment. "Assessment" means the levy imposed by this ordinance to promote tourism within the desert communities and to fund related programs.

g. Gross Rental Charges. Gross Rental Charges shall equal the total dollar amount charged for overnight room rentals to guests (with the exception of government employees and with the exception of long term guests who stay more than twenty-eight consecutive nights at the same Assessable Hotel or Assessable Motel), but shall not include incidental room charges such as room service, video rental, or similar charges. Gross Rental Charges are equal to the total consideration charged for room rental valued in U. S. dollars, whether or not received and whether received in money or other consideration such as goods, labor, property or otherwise.

h. Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designated for occupancy by transients for dwelling, lodging, or sleeping purposes, including, but not limited to, any hotel, inn, bed and breakfast, tourist home or house, motel, studio hotel, bachelor hotel, lodging-house, or other similar structure or portion thereof.

i. Motel. "Motel" means any structure, or any portion of any structure, which is occupied or intended or designated for occupancy by transients for dwelling, lodging, or sleeping purposes, including, but not limited to, any hotel, inn, bed and breakfast, tourist home or house, motel, studio hotel, bachelor hotel, lodging-house, or other similar structure or portion thereof.

j. Operator. "Operator" means the person who is the proprietor of the hotel or motel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed to be an operator for purposes of this ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

k. Tourism BID. "Tourism BID" means the Palm Springs Desert Resort Communities Tourism Business Improvement District established by this ordinance.

Section 6. ESTABLISHMENT OF TOURISM BID. The Palm Springs Desert Resort Communities Tourism Business Improvement District is hereby established as a parking and business improvement area under the Act. The boundaries of the Tourism BID are coterminous with the operational boundaries of the Palm Springs Desert Resorts Convention and Visitors Authority, including unincorporated Coachella Valley and the cities of Cathedral City, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Springs, Palm Desert, and Rancho Mirage. A map and legal description of the boundaries are attached hereto as Exhibit 1 and incorporated herein by reference. The Tourism BID and all Assessable Hotels and Assessable Motels within the boundaries of the Tourism BID shall be subject to the Act and all subsequent amendments thereto.

a. Advisory Board. Pursuant to the Act, the Board of Supervisors has appointed Hospitality Industry and Business Council, Inc. to serve as the Advisory Board for the Tourism BID to make recommendations concerning its operations and the expenditure of revenues derived from the levy of Assessments. The Hospitality Industry and Business Council, Inc. manages the Palm Springs Desert Resort Communities Convention and Visitors Authority subject to the approval of the Executive Committee of the Palm Springs Desert Resort Communities Convention and Visitors Authority. In addition, the Advisory Board shall have such other powers and be authorized to perform such other duties as the Board of Supervisors may from time to time determine and direct. The Advisory Board shall annually present a report to the Board of Supervisors for approval which shall include a program of activities intended to be implemented within the Tourism BID together with an estimate of related expenditures. The Advisory Board shall also submit an annual report to the Board of Supervisors outlining the previous years' revenues and how those revenues were expended.

Section 7. LEVY OF ANNUAL ASSESSMENTS. Except where funds are otherwise available, an assessment shall be levied annually on all Assessable Hotels and Assessable Motels located within the boundaries of the Tourism BID to pay for all Activities within the Tourism BID. The revenue from the levy of Assessments within the Tourism BID shall not be used to provide improvements or activities outside the area of the Tourism BID or for any purpose other than the purposes specified in the Resolution of Intent.

a. Method and Basis of Levying Annual Assessments. The Assessments levied on Assessable Hotels and Assessable Motels pursuant to this ordinance are levied on the basis of the estimated benefit to the Assessable Hotels and Assessable Motels derived from the Activities to be funded through the Tourism BID.

An annual assessment shall be levied on Assessable Hotels and Assessable Motels in the amount of two percent (2%) of the Gross Rental Charges for overnight room stays.

Each Operator of an Assessable Hotel or Assessable Motel shall collect and pay the Assessment as provided in this ordinance. If the Operator of an Assessable Hotel or Assessable Motel elects to pass on some or all of the Assessment to its guests, the Operator shall separately identify or itemize the Assessment on any document provided to the guest. The amount of the Assessment shall be separately stated from the amount of the rent charged, and each guest shall receive a receipt for payment from the Operator.

For each fiscal year in which the Assessment is to be levied, the Advisory Board shall cause to be prepared a report. The report shall be filed with the Clerk of the Board and shall identify the Activities to be funded during that fiscal year and contain an estimate of the cost of providing those Activities. The report shall also contain all other items required to be included in an annual report under the Act. The Board of Supervisors may approve the report as filed by the Advisory Board or modify any particular contained in the report and approve it as modified.

After the approval of the report, the Board of Supervisors shall adopt a resolution of intention to levy an annual assessment for that fiscal year, hold a public hearing, and thereafter adopt a resolution confirming the report and levying the annual assessment in accordance with the specific procedures set forth in the Act.

The annual report for Fiscal Year 2008-2009 having been adopted and confirmed, the Board of Supervisors hereby levies the Assessment for Fiscal Year 2008-2009 and authorizes the levy of future annual Assessments upon the adoption of an appropriate resolution by the Board of Supervisors pursuant to the procedures outlined above.

b. Time and Manner of Collection of Annual Assessments. Annual Assessments shall be collected by the County Treasurer-Tax Collector in four (4) installments. Each Operator of an Assessable Hotel or an Assessable Motel shall, on or before the last day of the month following each quarter, make a report to the County Treasurer-Tax Collector on return forms provided by the County reflecting the dollar amount of Assessment due for that quarter. The full amount of the Assessment shall be remitted to the County Treasurer-Tax Collector at the time that the return form is filed. The return form and payment of the full amount of the Assessment shall be due no later than the last day of the month following the close of each calendar quarter and shall become delinquent if not post-marked or received in the County Treasurer-Tax Collector's office on or before the last day of the month following the close of each calendar quarter. Nevertheless, returns and payments from the Operator of any Assessable Hotel or Assessable Motel shall be due immediately upon cessation of business for any reason.

The County Treasurer-Tax Collector may establish shorter reporting or remitting periods if shorter periods are deemed reasonably necessary to insure proper collection of the Assessment from any Operator. In addition, the County Treasurer-Tax Collector may require Operators to provide such additional information in any return as is deemed reasonably necessary to enable proper collection of the Assessment.

Each return shall contain a declaration under penalty of perjury, executed by the Operator or its authorized agent, that, to the best of the declarant's knowledge, the statements in the return are true, correct, and complete.

Any Operator of an Assessable Hotel or Assessable Motel who fails to remit any Assessment imposed by this ordinance within the time required, shall pay a penalty of ten percent (10%) of the amount of the Assessment in addition to the amount of the original Assessment. Any Operator of an Assessable Hotel or Assessable Motel who fails to remit any delinquent remittance on or before the fifteenth day of the month following the date of the first penalty shall pay a second delinquency penalty of ten percent (10%) of the amount of the Assessment in addition to the sum of the original Assessment and the ten percent (10%) penalty first imposed.

If the County Treasurer-Tax Collector determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the corrected Assessment (as determined by the County Treasurer Tax Collector) shall be added thereto in addition to the penalties stated above.

In addition to the penalties imposed, any Operator of an Assessable Hotel or Assessable Motel who fails to pay any Assessment imposed by this ordinance shall pay interest at the rate of one percent (1%) per month, or fraction thereof, on the amount of Assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Every penalty imposed and such interest as accrued under the provisions of this section shall become a part of the Assessment required to be paid.

The County may charge an administrative fee for the collection and processing of the Assessments in order to recover its reasonable costs for this service and may also fully recover all other reasonable, direct and indirect collection costs and enforcement costs, including but not limited to, court costs and attorneys' fees.

The County Treasurer-Tax Collector shall establish an interest bearing trust fund for deposit of all Assessments collected pursuant to this ordinance. On a quarterly basis, the County Treasurer-Tax Collector may deduct monies from the trust fund to reimburse itself and other County departments for actual costs associated with the administration of the Tourism BID and this ordinance and for all direct and indirect costs of collection related activities and enforcement related activities, including but not limited to, court costs and attorneys' fees. On a quarterly basis, after first deducting such costs, the County-Treasurer-Tax Collector shall transfer all remaining Assessment revenues and interest in the trust account to the Palm Springs Desert Resorts Convention and Visitors Authority which shall only expend the transferred Assessment revenues in accordance with the annual report approved and confirmed by the Board of Supervisors.

c. Time and Manner of Appeal. If any Operator of an Assessable Hotel or Assessable Motel refuses or fails to file a timely return or to remit timely payment of an Assessment or any portion thereof, the County Treasurer-Tax Collector shall proceed in such manner as he or she deems best to obtain facts and information on which to base his or her estimate of the Assessment due. If the County Treasurer-Tax Collector determines

that any Operator of an Assessable Hotel or Assessable Motel has not properly calculated the Assessment, properly filed a return, or properly paid the Assessment as required by this ordinance, the County Treasurer-Tax Collector shall procure such facts and information as he or she is able to obtain and shall estimate and determine the Assessment due from that Operator including any authorized interest and penalties.

Upon such a determination, the County Treasurer-Tax Collector shall give notice of the Assessment amount by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator at his last known address. Such Operator may within ten (10) calendar days after serving or mailing of such notice make application in writing to the County Treasurer-Tax Collector for a hearing on the Assessment. An Owner may only request a hearing related to the Assessment being levied on his particular Assessable Hotel or Assessable Motel. Class-action or representative claims for hearings are not authorized by this ordinance.

If application by the Operator for a hearing is not made within the time prescribed, the Assessment, interest and penalties, if any, determined by the County Treasurer-Tax Collector shall become final and conclusive and immediately due and payable. If application for a hearing is made, the County Treasurer-Tax Collector shall give not less than five (5) calendar days written notice to the Operator to show cause at a time and place fixed in said notice why the Assessment amount, interests, and penalties, if any, determined by the County Treasurer-Tax Collector should not be fixed as the amount to be assessed against the Operator.

At the hearing, the Operator may appear and offer evidence why the specified Assessment, interest, and penalties should not be levied. After the hearing, the County Treasurer-Tax Collector shall determine the amount of the Assessment, interest, and penalties, if any, that the Operator is required to remit pursuant to this ordinance. The County Treasurer-Tax Collector shall give notice of his or her decision by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator at his last known address. The amount of the Assessment, interest, and penalties, as reflected in the County Treasurer-Tax Collector's written decision shall be payable fifteen (15) calendar days after personal service or mailing of the decision unless the Operator applies for an appeal to the Board of Supervisors. An Owner may only apply to the Board of Supervisors for an appeal related to the Assessment being levied on his particular Assessable Hotel or Assessable Motel. Class-action or representative requests for appeals to the Board of Supervisors are not authorized by this Ordinance.

Any Operator aggrieved by any decision of the County Treasurer-Tax Collector with respect to the levy of an Assessment, interest, or penalties under this ordinance may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board within fifteen (15) calendar days of the serving or mailing of the County Treasurer-Tax Collector's written decision reflecting the Assessment, interest, and penalties due under this ordinance. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board shall give notice in writing to such Operator at his last known address.

At the hearing, the Operator may appear and offer evidence as to the amount of Assessment, interest, and penalties, if any, that should be levied against the Operator. After the hearing, the Board of Supervisors shall determine the amount of the Assessment, interest, and penalties, if any, that the Operator is required to remit pursuant to this ordinance. The decision of the Board of Supervisors shall be final and conclusive. The

Board of Supervisors shall give notice of its decision by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator at his last known address. Any amount found by the Board of Supervisors to be due shall be immediately due and payable upon mailing or personal serving a copy of the decision to the Operator.

d. Operator's Duty to Maintain Records. It shall be the duty of every Operator of an Assessable Hotel or Assessable Motel to keep and preserve for a period of three years all records as may be necessary to determine the amount of Assessments levied for which the Operator may be or may have been liable for payment to the County. The records deemed necessary for this determination shall include, but not be limited to, general ledgers, income tax returns, a chronological cash journal, or other comparable means of summarizing Operator's monthly or quarterly revenue, supported by receipts. These records shall be available during regular business hours for inspection by the County Treasurer-Tax Collector or County Auditor-Controller upon twenty-four hours prior written notice.

e. Refunds. Whenever the amount of any Assessment levied, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this ordinance, it may be refunded or taken as a credit against Assessments collected as set forth here-in provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the County Treasurer-Tax Collector within three (3) years of the date of the payment.

In the event that the Operator of an Assessable Hotel or Assessable Motel elects to pass on some or all of the Assessment to its guests, the Operator may file a claim for a refund against the assessment levied and remitted to the County, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is properly established that the guest who paid the Assessment was incorrectly charged. However, a refund or credit against Assessments shall not be allowed to the Operator if the amount of the Assessment has been refunded by the County to the guest who paid the Assessment.

A guest of an Assessable Hotel or Assessable Motel may obtain a refund of an Assessment overpaid or paid more than once or erroneously or illegally collected or received by the County by filing a claim for a refund as described above, but only when the Assessment was paid directly to the County Treasurer-Tax Collector or when the guest, having paid the Assessment to the Operator, satisfactorily establishes that he or she has been unable to obtain a refund from the Operator who elected to pass on some or all of the Assessment to the guest.

No refund shall be paid nor credit against Assessments provided unless the claimant establishes his or her right thereto by written records and argument showing entitlement thereto.

f. Collections and Remedies. Any Assessment required to be paid by any Operator of an Assessable Hotel or Assessable Motel pursuant to this ordinance shall be deemed a debt owed by the Operator to the County. If the Operator of an Assessable Hotel or Assessable Motel elects to pass on some or all of the Assessment to its guests, the amount collected by the Operator that has not been paid to the County shall be deemed a debt owed by the Operator to the County. Any person owing money to the County under this ordinance shall be liable in an action brought in the name of the County for the recovery of such amount. In addition, the County may pursue any other remedies available at law or in equity. The remedies for collection and enforcement set forth in this ordinance shall be cumulative and not exclusive.

Section 8. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 9. EFFECTIVE DATE. This ordinance shall take effect thirty (30) calendar days after its adoption. The Chairman of the Board of Supervisors shall sign this ordinance and the Clerk of the Board of Supervisors shall attest to the Chairman's signature and then cause the same to be published along with the names of the Board members voting for and against the ordinance within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated in the area of the Tourism BID.

Adopted:

883 Item 3.45 of 11/25/2008 (Eff: 12/25/2008)

Amended:

883.1 Item 3.75 of 06/02/2009 (Eff: 07/02/2009)

883.2 Item 3.27 of 05/25/2010 (Eff: 07/20/2010)

EXHIBIT 1

**MAP AND LEGAL DESCRIPTION OF THE BOUNDARIES OF
THE PALM SPRINGS DESERT RESORT COMMUNITIES TOURISM
BUSINESS IMPROVEMENT DISTRICT**