Agenda Report

July 11, 2016

TO: Honorable Mayor and City Council

FROM: Interim City Manager

SUBJECT: **AMENDMENT TO OPERATING AGREEMENT 12,380-2 BETWEEN THE CITY OF PASADENA AND THE PASADENA CENTER OPERATING COMPANY (PCOC) ESTABLISHING A MAXIMUM AMOUNT OF TRANSIENT OCCUPANCY TAX REVENUES TO BE TRANSFERRED TO THE PCOC ANNUALLY**

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines section 15061(b)(3), the General Rule; and

2. Approve an amendment to Operating Agreement 12,380-2 between the City of Pasadena and the Pasadena Center Operating Company ("PCOC" or "Center") that: (1) establishes a maximum amount of Transient Occupancy Tax revenues to be transferred to the PCOC annually; and, (2) removes the requirement that PCOC pay the City its net revenue, as further described in this report; and

3. Request the PCOC Board of Directors to approve the same consistent with the PCOC Board action of June 22, 2016.

BACKGROUND:

Pursuant to Pasadena Municipal Code Chapter 2.165, and Operating Agreement 12,380, the Pasadena Center Operating Company serves as the City's Managing Agent for the Civic Auditorium and conference center.

Section 7 of the Operating Agreement, entitled Budget, Yearly Payments, Taxes sets forth several provisions related to: 1) the sharing of the City's Transient Occupancy Tax

(TOT) revenues received by the City with the PCOC; 2) annual payment to the City of PCOC net revenue, and 3) the payment of all state and local taxes by the City on behalf of PCOC.

Specifically, Section 7 of the Operating Agreement establishes that:

- The City provide to the PCOC TOT revenues that otherwise would remain with the City's General Fund, equal to 60% of the Base TOT (defined as the first 10.18% of the tax), and 100% of the Incremental TOT (defined as the amount above 10.18% to the effective rate, which is currently 12.11%).

- At least annually, the PCOC shall pay to the City the net revenue, if any, from the operation and use of the Center remaining after the payment of expenses and costs, if any, for maintenance, operation and management, interest and principal payments upon loans for the maintenance, operation or management, and any other expenses, and after providing maintenance and operation reserves. It is important to note that this provision has not been implemented and that any funds remaining with the PCOC at the end of the fiscal year have remained as PCOC fund balance.

- City would pay, for and on behalf of the PCOC, all state and local taxes. This provision as well has not been adhered to including, but not limited to, the fact that the City has been charging the PCOC Utility Users Tax. Current UUT charges by the City are estimated at approximately $150,000, annually. Incidentally, the Rose Bowl Operating Company is not charged UUT by the City, owing to the fact that it was once a City department and, when established as an operating company, its utility accounts remained as City accounts, exempt from the tax.

Staff is recommending that changes be made to the Operating Agreement to create an annual cap on the amount of TOT revenues provided by the City's General Fund to the PCOC. In that regard, it should be noted that, absent the Operating Agreement, TOT revenue is general fund revenue, and there are no legislative or regulatory requirements that it be directed to any particular organization or use.

In conjunction with the proposed cap, staff is recommending that the provisions of the Agreement requiring the PCOC to pay to the City net revenue annually be removed from the Agreement. Further, and working with the PCOC, City staff will take the necessary actions either to exempt or reimburse the PCOC for all local and state taxes as set forth in the Operating Agreement on a go-forward basis.

As part of the economic recovery a number of hotel properties have been, or are planning to be, developed in Pasadena. These include the dusitD2 Constance Hotel, which opened in 2015, and Marriott Residence Inn, which is anticipated to open this summer. An expected Hyatt Place hotel is part of the entitlements for the Paseo Colorado Redevelopment Project. A proposed Kimpton Hotel in the Civic Center, involving the historic restoration of the Julia Morgan YWCA building, is currently moving through the entitlement process, as is a proposal for up to two hotels at the northwest and southwest corners of Hill Street and Colorado Boulevard.

An analysis commissioned by the City in 2013 estimated that should all of these projects be completed, the incremental increase in TOT revenue could reach several million dollars annually, and increasing over time.

Under the current provisions of the Operating Agreement, there is no cap on the amount of TOT revenues transferred annually to the PCOC. Consequently, it is conceivable that, while the City's General Fund faces a growing structural deficit after Fiscal Year 2017, the PCOC may see a windfall of TOT revenue which when combined with operating revenues, exceed what is necessary to cover debt service obligations, provide for operations and fund maintenance activities. Consequently, staff has proposed the introduction into the Operating Agreement of a cap on TOT revenue transfers.

Over the past several weeks staff has held a series of meetings with representatives of the PCOC Board in an effort to develop a proposal that would be fair to both the Center and the General Fund. Since the General Fund is the ultimate guarantor of PCOC debt, it is important that the Center continue to be able to make its debt service payments in addition to operating first class facilities.

Staff proposes that the PCOC continue to receive the same percentage share of TOT as presently specified; 60% of base and 100% of increment. However, staff recommends that the Operating Agreement establish an annual cap equal to the sum of 1) the annual debt service payment on the 2006A and 2008A expansion project bonds, plus 2) an allowance of $500,000 to be used by the PCOC for maintenance, repairs, capital improvements and/or debt service. It should be noted that the annual debt service associated with the Conference Center expansion increases over time based on the structure of the financing.

Additionally, staff is proposing that the provisions of the Operating Agreement requiring the PCOC to pay all net revenue to the City be removed from the Agreement.

It is important to consider that, under the proposed amendments to the Operating Agreement, PCOC would not be precluded from receiving additional General Fund revenues. The proposed amendment establishes a cap on how much revenue the

Center receives through TOT revenues without having to make a supplemental request of the City Council.

On June 22nd the PCOC Board of Directors passed a motion (Attachment A) consistent with the staff recommendation. As part of the motion the PCOC asked that the parties review the amendment in two years. Staff is in agreement with this two year review.

Should the City Council approve the staff recommendation, the PCOC Board will be asked to formalize its approval of an amendment to the Operating Agreement. After approval by the City Council and the PCOC Board, the City and PCOC will then proceed to sign an amendment which sets forth the approved modifications.

ENVIRONMENTAL ANALYSIS:

The Operating Agreement with PCOC is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, such as the proposed amendment to the Operating Agreement, may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT:

For Fiscal Year 2017, it is estimated that the City will receive $15,615,000 in gross TOT revenue. Under the terms of the proposed amendment, the amount transferred to the PCOC would total $9,883,000, and the General Fund would retain $5,732,000; an increase of approximately $475,000 than what would otherwise occur. These new incremental revenues will be partially offset by exempting the PCOC from UUT and other taxes as discussed above, which if equal to $150,000, would result in a net revenue increase for the General Fund of $325,000.

Respectfully submitted,

Steve Mermell
Interim City Manager