



Las Vegas

Agenda Item No.: 45.

AGENDA SUMMARY PAGE
CITY COUNCIL MEETING OF FEBRUARY 3, 2010

DEPARTMENT: OFFICE OF BUSINESS DEVELOPMENT

DIRECTOR: BILL ARENT

☐ Consent ☒ Discussion

SUBJECT:
RESOLUTIONS:

R-2-2010 - A RESOLUTION and possible action regarding a Resolution authorizing the City of Las Vegas, Inc.'s application to the Internet Corporation for Assigned Names and Numbers for the creation of a .vegas Top Level Domain - All Wards

Fiscal Impact

☐

No Impact

☐ Augmentation Required

☐

Budget Funds Available

Amount:

Funding Source:

Dept./Division:

PURPOSE/BACKGROUND:

The City of Las Vegas is supporting Dot Vegas, Inc.'s, application to the Internet Corporation for Assigned Names and Numbers for the creation of a .vegas Top Level Domain in the Domain Name System. In return, Dot Vegas, Inc., has offered a Revenue Share Agreement whereby the City will receive the greater of (a) \$0.50 per registration year for each second level domain name registered in the .vegas Top Level Domain for which Dot Vegas, Inc., collects domain name registration or renewal revenue; or (b) ten percent of the gross profits derived by Dot Vegas, Inc., from domain name registrations or renewals.

RECOMMENDATION:

Approval

BACKUP DOCUMENTATION:

1. Resolution No. R-2-2010
2. Revenue Share Agreement
3. Letter of Support
4. Submitted at Meeting - Letters of Support from Las Vegas Chamber of Commerce, Las Vegas Convention and Visitors Authority, Nevada Development Authority and City of North Las Vegas and Addendum Revenue Share Agreement by Staff and Letter of Concern from Lewis and Roca by Mayor Goodman
5. Submitted after Meeting - PowerPoint Presentation by Staff

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Motion made by RICKI Y. BARLOW to Approve the Resolution to support the application and the Revenue Share Agreement as amended

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0

RICKI Y. BARLOW, LOIS TARKANIAN, OSCAR B. GOODMAN, STAVROS S.

ANTHONY; (Against-STEVE WOLFSON, GARY REESE, STEVEN D. ROSS); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

BILL ARENT, Director of the Office of Business Development, stated that this item is indicative of the City looking at active marketing opportunities for the City of Las Vegas. Las Vegas and Vegas are well-known brands throughout the world. Where appropriate, and where there are no conflicts of interests for the City, staff has pursued other active marketing ventures, such as Active Network in 2007, to leverage the Vegas brand for various opportunities.

MR. ARENT mentioned that representatives from Dot Vegas, Inc. made an unsolicited offer to the City. He explained the opportunity proposed by ICANN (Internet Corporation for Assigned Names and Numbers), who is a regulator of internet names, will be considering applications for city top level Domain TLD names. Using a PowerPoint presentation, MR. ARENT summarized the details of the agreement.

Lastly, MR. ARENT pointed out that when Dot Vegas, Inc. approached the City, it had already contacted several companies that provided letters of support, which he submitted for the record. Additionally, the last offer made by Dot Vegas required a technical change to the agreement, a copy of which he submitted for the record. MR. ARENT felt comfortable with the negotiations reached.

COUNCILMAN WOLFSON asked if ICANN is a government agency. MR. ARENT replied that it is registered as a California non-profit corporation and follows an international governance model where various constituencies around the world are represented on the board of directors, included in that is the Department of Commerce. He further explained that ICANN is going to do a selection for City domains and Dot Vegas, Inc. is looking for a letter of support.

COUNCILMAN WOLFSON wondered if the company will seek more requests from other cities. MR. ARENT replied that it potentially could, but the upfront capital investment is considerable and there is no guarantee of obtaining approval. As part of the Revenue Share Agreement negotiated, the City's recommendation is exclusive, which is an incentive that will be great for marketing the City.

COUNCILMAN WOLFSON was concerned about using the name Vegas, not having any control over its use and that by allowing its use the City may be endorsing a company the City may not want to endorse. MR. ARENT replied the City has to weigh the pros and cons. There are laws that prohibit what is put on the Internet. Approval would endorse Dot Vegas application, not any other endorsements.

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CITY ATTORNEY BRAD JERBIC stated that the City would be receiving revenue in exchange for a letter of support. If the company is successful, there is no way of knowing who will register with .vegas as opposed to .com. That could range the gambit from legitimate commercial businesses to illegal businesses, but the City does not have any control over who those businesses might be, and he does not believe the City would have any liability.

COUNCILMAN WOLFSON remarked that .com is a generic brand versus .vegas. People associate Vegas with Las Vegas. MR. ARENT pointed out that a number of names have been reserved and the list could be augmented to ensure that local government partners have reservation of a name.

COUNCILMAN ANTHONY asked for examples of other unsolicited offers that have been successful. MR. ARENT replied that unsolicited offers were received from the Cleveland Clinic and HANK GORDON, one of the most successful local retail developers.

COUNCILWOMAN TARKANIAN asked why this could not have gone out under the Request for Proposal (RFP) process. MR. ARENT explained that this process is different because the City does not own the name Vegas, so it could not legally put it out to bid. The City is a third party endorsing the application. It could be put out to bid, but it would be difficult to determine the parameters to be used. The City is not in the Internet business and would simply be endorsing the application, and he is comfortable with that decision.

CITY ATTORNEY JERBIC added that a group of individuals came with an original idea seeking the City's support. By requesting a letter of support, the City is releasing that information to the public. But at the same time, it puts the City in an unusual position to put out to bid that company's idea. COUNCILMAN WOLFSON verified with MR. ARENT that ICANN opened the TLDs to cities. CITY ATTORNEY JERBIC clarified that there is the advantage of a group picking a name and coming up with a business model to share with the world.

COUNCILMAN REESE asked if the City could put out an RFP, to which CITY ATTORNEY JERBIC replied no because there is a risk in taking someone else's idea and putting it out to bid.

COUNCILMAN ROSS was perplexed about the rush to approve this matter. MR. ARENT indicated that he receives unsolicited offers every day, and he believes this offer is a great opportunity for the City and good business sense, given the huge visitor component of Las Vegas. The City made a decision to negotiate the unsolicited offer after looking at the letters of support from the regional partners and tried to understand the likelihood for completion. The Council has the ultimate discretion in this matter.

COUNCILWOMAN TARKANIAN did not believe that staff is trying to sell anything to Council. After doing its research, staff concluded on an affirmative recommendation to the Council.

MAYOR GOODMAN stated that Dot Vegas, Inc., could obtain letters of support from other entities and use it without the City's letter of support in order to submit the application. The City is giving them something that is not needed for a fee.

COUNCILMAN ROSS assessed that the company would start operating in three years because it would have to undergo the approval process. He asked whether the City is missing an opportunity to make more money. MR. ARENT stated that the company's background speaks to

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its extended direct experience. Staff had to do a lot of homework when it first received this unsolicited offer.

TERRY JICINSKY appeared on behalf of the Las Vegas Convention and Visitors Authority and stated the Authority might have had an informational meeting over a year ago with this company, but it did not provide a letter of support. However, MAYOR GOODMAN read a support letter, which was submitted by MR. ARENT, signed by ROSSI RALENKOTTER of the Authority supporting this venture.

COUNCILMAN REESE remarked that if other companies had known about this venture, they would have approached the City with offers to choose from. MR. ARENT replied that the original offer was for 10 percent of the gross profit; since the abeyance, it was amended to 10 percent of gross revenue. COUNCILMAN REESE also expressed concern about the City not having control over the use of the name.

MR. ARENT appreciated the concerns and questions raised by the Council, and that his presentation may not have provided the Council with the level of comfort level to move forward with this matter; therefore, he suggested holding more detailed discussions between the Council and staff to enable the Council to make a more informed decision.

COUNCILMAN WOLFSON verified with MR. ARENT that Dot Vegas sought letters from companies with the name Vegas.

ATTORNEY JAY BROWN, 520 South 4th Street, appeared on behalf of Dot Vegas, Inc., together with BART MACKAY and JIM TREVINO, 2000 Las Vegas Boulevard, and stated that regardless of whether the City Council takes action on this item, anybody can apply for the name, and the City runs the risk of getting nothing in return. His client began this process with City staff a while ago. It would be fair to consider new rules for the RFP process, but not starting with his clients proposal. However, this should have been brought up a year and a half ago. MAYOR GOODMAN clarified that MESSRS. MACKAY and TREVINO met with him about this interesting concept, so at the time, he deferred them to the Office of Business Development, but had not heard about this matter until it was put on the agenda.

MR. MACKAY, founder of Dot Vegas, Inc., stated that he has been working on this project for the past three years on trying to set up the process for successfully using a .vegas domain. He has spoken with many individuals and was impressed with MR. ARENTS comprehension of this industry.

MR. MACKAY indicated that ICANNs legitimacy is created by a memorandum of understanding from the Department of Commerce. It is considered a global post office for the internet and controls the rights for who gets to be recognized as an address on the Internet. As far as ideas, there are many nations that had the opportunity to have their country code domain, which was out there, which resulted in others taking advantage of the opportunity.

MR. MACKAY stated that because they care for this community, MR. TREVINO and he sought support of various local entities or stakeholders. Concerns over control of .vegas and the use of the content are legitimate. But he pointed out that the term Las Vegas is already being used by thousands of sites without the Citys control; they could be porn sites or anything else, but it has not done any damage to the City. Under the .vegas domain, the registry sets the rules and can

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protect that brand, in many respects. If anything illegal goes on, the registry can flip a switch and stop the site. In this case, Dot Vegas, Inc., is developing policies that will allow the delicate balance of protecting the interest of the community and its brand name while maximizing opportunities and revenues for the City of Las Vegas and Dot Vegas, Inc.

Regarding the RFP issue, MR. MACKAY stated that he has seen governments step up RFPs to take control of their country code TLD. In one case, the Department of Commerce went to ICANN, the operator of .US, to obtain control of .US through an RFP, and the European Commission did the same with .EU, which has become the bane of their existence, because they were held liable when pornographers started buying the name and putting content on child sites. The RFP process does not lend itself to this type of venture. No one owns .vegas, but ICANN can regulate it.

MR. MACKAY noted that he is aware of the rules because he has been involved with ICANN since 1989 and worked closely to develop a credible relationship with them. ICANN is in the process of finalizing rules and policies within the ICANN process that will affect the operation of .vegas TLD. So, now is the time to go forward with the City's full support in making sure that rules and regulations are favorable. Without the City's endorsement, Dot Vegas will proceed in a different direction because there are two types of applications: general open and community-based applications. But having the City's endorsement improves Dot Vegas' chances and would put it in the community-based application pool. There is urgency because the ICANN Board of Directors is considering an Expression of Interest, which has to be submitted before applications are submitted. Only those who submit an Expression of Interest are eligible to participate in this round of community TLDs.

Dot Vegas, Inc.'s, approach to this process is not posthaste. Having done its homework, it is time to setup the methodology for the application in order to increase its chances for success.

COUNCILMAN WOLFSON acknowledged MR. MACKAY working with staff, but noted the Council only heard about this project two weeks ago. MR. ARENT briefed the Council, but another prominent company came forward in the interim.

COUNCILMAN ROSS stated that MR. ARENT should have approached the Councilmembers sooner to consider the details. His concern is protecting the Vegas name. He asked how much Dot Vegas, Inc., would make for each address. MR. MACKAY answered that the .75 cents is nominal and consistent with 10 percent and with what Verisign is charging for a .com. Done properly, he cannot tell what the market will bear at this point in time. When .cc was launched in 1999, a \$100 registration fee was paid for two years. Dot Vegas has done studies that indicate there is a way to maximize revenue opportunities.

COUNCILMAN BARLOW verified with MR. MACKAY that the City's endorsement is not needed, but it provides a greater opportunity to win the application. The Community based application due date has not been set; pending the Expression of Interest to be submitted and to be discussed at the ICANN board meeting to be held next week.

COUNCILMAN ANTHONY asked how local jobs would be created. MR. TREVINO replied that the intent is to keep the jobs and technology locally. Approximately 40 jobs would be created with earnings of upwards of \$60,000.

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Addressing COUNCILMAN ROSS, MR. TREVINO pointed out that this information has been available on the Internet for three years and asserted that Dot Vegas was being diligent and open, which is probably what prompted others to come forward with the same idea. He feels that the onerous is being placed on Dot Vegas, but it was the first in this type of venture to approach the City with a revenue generating deal.

COUNCILMAN WOLFSON confirmed with MR. ARENT that this company approached the City on 6/2009 and that he met with MR. GREENSPUN after this matter was held in abeyance.

COUNCILMAN ROSS stressed that it is incumbent upon the Council to ensure transparency. MR. ARENT indicated that while he met with MR. MACKAY and MR. TREVINO, the City Attorney had questions about the City's role and he did not reach a comfort level until a few weeks ago when he concluded that there were no legal or ethical concerns.

COUNCILMAN ANTHONY asked if the website could be removed, should it be found that .vegas was being misused. CITY ATTORNEY JERBIC responded that under the Constitution, governments do not have the ability to regulate content. Content does not get to pick and choose speech. Therefore, the City would not have the ability to control the content.

COUNCILMAN BARLOW stated that the City cannot control everything with the Vegas name and it is not good business to attempt to control what as much of it already goes on.

ATTORNEY JOHN MORAN, 630 South 4th Street, appeared on behalf Vegas.com, and introduced BRIAN GREENSPUN, President and Principal of the Greenspun Corporation, 901 North Green Valley Parkway, HOWARD LEFKOVITZ, President of Vegas.com, JIM GIBSON, Senior Vice President of the Greenspun Corporation, and ELISA COOPER, Director of Marketing for MarkMonitor, 391 Ancestor Place, Boise, Idaho. ATTORNEY MORAN stated that this is not a race to the finish line, and that there is no reason not to use the RFP process or why the Council should not consider the best deal for its residents.

MR. GIBSON stated that two and half years ago MS. COOPER began doing business with Vegas.com on the matter being considered by the Council, but they were not able to meet with the City and the Mayor. He urged the Council not to authorize the letter of support to Dot Vegas, Inc., as there is no urgency at this time.

MS. COOPER stated that, as Director of Marketing for MarkMonitor, she is an active member of ICANN, the International Trade Mark Association and the International Anti-Counterfeiting Coalition. For the past eight years, she has been working closely with MarkMonitor, an ICANN accredited registrar. It does corporate domain registrations for only large companies, such as Yahoo and eBay. It has been monitoring this closely, and all this time there have been guidebooks of what is needed in order to qualify and submit an application to obtain this TLD. She alleged that the bulk of what was represented by Dot Vegas is incorrect.

MS. COOPER declared that there is no notion of a city TLD and there are different types, like community based and standard applications. ICANN has been moving slowly to release these and has been providing guidance to their clients. ICANN just released the third version of the

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guidebook, and she does not anticipate the next version to be released soon. Since the guidebook is not final, a decision cannot be made at this time. Vegas is not the name of the City, but there is a geographical review panel, and she opined that they would see Vegas, and in particular this proposed use, as a geographical indicator. Subsequently, a letter of support would be required to consider the application complete.

MAYOR GOODMAN verified with MS. COOPER that she would advise her client that it would not be a good decision to proceed without knowing all the requirements of the guidebook.

MS. COOPER explained to COUNCILMAN BARLOW that there would be a risk should the technical and infrastructure requirements not be met. Pertaining to the City of Las Vegas, without reviewing the application, there might be the possibility that it might not be granted. COUNCILMAN BARLOW verified with MS. COOPER that if Dot Vegas, Inc., were denied the letter of support, other companies could come forward and request the same letter.

COUNCILMAN ROSS confirmed with MS. COOPER that the City is being premature because the rules and requirements are not final.

MR. ARENT verified for COUNCILMAN ROSS that he has not spoken to CANN representatives. The Councilman wondered how he would respond to MS. COOPER'S comment on being premature with this project. MR. ARENT replied that Dot Vegas, Inc., is a private non-profit and well-known organization. He did not make a representation that there was urgency in this matter. From a business perspective, it is not a simple application and a lot of work is needed to finalize the best application possible. Therefore, it is not unreasonable to support the company at this time. MR. MACKAY has experience with running a TLD, knowing how it works and the investment required. Given that, it makes sense to move forward.

MAYOR GOODMAN verified with MS. COOPER that they provide premium consulting to all their clients, and have been working with Vegas.com for the last three years.

MS. COOPER pointed out that this new program is interesting because rules and guidelines can be created regarding what content can be displayed. The Council and Mayor could participate in an advisory position to some other firm. She understands the need for free speech, but at the same time, there needs to be certainty that policies supported by a .vegas registry are the ones that prohibit potential offshore gaming or other things that might be detrimental to the brand. That needs to be incorporated into the application.

MS. COOPER emphasized that Vegas.com has a team agreement with Verisign to provide infrastructure support in assisting with launching, which is a key component to having a successful application and registry.

MR. LEFKOWITZ indicated that the reason they would come back for a letter of support is due to inciting incident; there is no specific deadline. MR. GIBSON added that they were told they could not do it but now understand that others are trying to do the same. They were going to wait until they saw the rules and understood the process so that the City could retain consultants to advise on what limitations the City could enforce through a contract. The agreement should be amended to incorporate or reference to accepted, approved, guidelines and rules that would govern this entire business.

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MR. LEFKOWITZ stated that Vegas.com is the largest city website in the world, 2.5 million visitors every month and a 10,000-square-foot data center available. The local media operations include Vegas Magazine and the Las Vegas Sun. The brand of Las Vegas is important, and Vegas.com believes in this city and has the technical and marketing personnel, both on line and off-line. It has spent millions of dollars in promoting Las Vegas in many different ways.

MAYOR GOODMAN interjected that six years ago MR. LEFKOWITZ invited him to tour the operation, but was never told the reason was regarding an application to ICANN. Had he been told, he would have kept his meeting appointment.

ATTORNEY MORAN remarked that there is no emergency to approve an exclusive contract with Dot Vegas. Vegas.com has been a good corporate partner with this city and many dollars have been spent here in Las Vegas. He asked the Council not to rush into this and asked for the opportunity to discuss Vegas.com's application.

MAYOR GOODMAN asked if a lawsuit would be filed, should the item be held in abeyance, to enjoin the City from lending a letter of support to Dot Vegas. ATTORNEY MORAN doubted such action would be taken.

MAYOR GOODMAN referred to a letter dated 2/26/10 which he read and submitted, that there might be a co-conspirator in the matter and violating the good name of Vegas.com. The Mayor stated he took it as a threat. ATTORNEY MORAN replied it is not a threat and that the letter was written by Vegas.com's counsel that deals in proprietary nature.

MR. GIBSON stated that the letter was the subject of the conference call. The problem is that there are a multitude of issues that they do not have the time to discuss. In order to put people on notice, it is the obligation of counsel to provide advice. Upon advisory, there was no alternative but to go ahead and write the letter.

COUNCILMAN WOLFSON asked if Vegas.com has been working on this application and if this application process is to obtain .vegas as a city TLD. MR. GIBSON replied affirmatively.

MR. GREENSPUN stated that based on what MS. COOPER has advised about this process, there has never been a rush to do the work. It has been a methodical process. If that letter of support is given to one company exclusively, another company cannot apply. If the Council takes action today, it would preclude Vegas Dot Com from having a relevant government agency.

COUNCILMAN WOLFSON verified with MR. GREENSPUN that his company has been working on this for months. MS. COOPER added that she and other representatives have been looking at this matter for more than two years.

MAYOR GOODMAN asked if the County is in a position to take action on this matter. MR. GIBSON replied that there is no application before the County. But in light of this, in the event that there is one more relevant government or public authority for the TLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. If Dot Vegas receives a letter of support from only the City of Las Vegas the application would be incomplete.

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MR. GIBSON asserted that there has not been a better partnering company that has done more for any organization in this town than the Greenspun Corporation, which also has an on-going business relationship with Verisign. He hopes for the opportunity to talk to the Council, and encouraged the Council not to take action at this time.

MAYOR GOODMAN responded that a company contacted the Office of Business Development and engaged in serious negotiations for staff's recommendation of approval. That is the way unsolicited requests have been dealt with in the past. The Mayor indicated that his ethical dilemma is that the rules changed at the eleventh hour because of the insightful moment. As a lawyer, he can appreciate the letter from the attorney but it bothered him, as well as the article in the newspaper. He wants to do the right thing for the City of Las Vegas and wants to follow the rules and generate as much money as possible for the citizens of Las Vegas.

MR. GIBSON stated that the Council has not heard everything. He opined that in considering the dollars the City needs, Vegas.com has had a hand in increasing the amount that Dot Vegas offered. After the matter was deferred, a different amount was offered. MAYOR GOODMAN recalled that ATTORNEY BROWN approached him before the matter was held in abeyance, and he advised ATTORNEY BROWN that Dot Vegas needed to make a better offer without knowing that MR. GREENSPUN was interested. MR. GIBSON noted that an RFP process is possible.

ATTORNEY MORAN implored the Council to make a haste decision and requested an audience with members of staff to show them know what Vegas.com can do.

Relative to the Mayor's comment regarding the article in the newspaper, MR. GREENSPUN stated that he cannot apologize for the accurate story because it is good and open, as government should be.

COUNCILWOMAN TARKANIAN asked if MR. GIBSON met with Clark County representatives. MR. GIBSON replied he had telephone conversations with two members of the County Commission.

MR. ARENT responded for COUNCILWOMAN TARKANIAN that he met with representatives of Vegas.com but, did not entertain the offer because he had negotiated in good faith with Dot Vegas, Inc.

COUNCILMAN WOLFSON verified with MR. ARENT that the City of Las Vegas did not enter into an Exclusive Negotiating Agreement with Dot Vegas, Inc. Staff was very clear that, for the City to consider, the City had to negotiate in good faith, and he has not signed a non-disclosure agreement.

CITY ATTORNEY JERBIC explained that after Dot Vegas, Inc., obtained support letters from four other entities, the City of Las Vegas was asked to draft a similar letter. He opined that he does not believe it is ethical under Nevada Ethics Laws for a political member of the Council to give a letter to an individual that gives that business an advantage over another business. There was no exclusive negotiating agreement, but there was an understanding that Council might give a letter of support in exchange for something that might benefit the City.

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MAYOR GOODMAN stated that in order to preclude this type of problem from occurring again, unsolicited offers will be accepted, which will change the way the City's way of doing business.

COUNCILMAN ROSS remarked that ATTORNEY BROWN and MR. ARENT have done a great job of bringing this because it opens an opportunity to generate revenue. He believes that regardless of who is best, he has to consider the public's well being and what is best for the City of Las Vegas.

MAYOR GOODMAN asked for both groups to send secret letters as to how much each company is willing to pay if the matter is held in abeyance. CITY ATTORNEY JERBIC advised that under Nevada Public Records Law, a letter is sent to the Mayor is completely discoverable by the public. He pointed out that the only thing on the agenda today is for the Council to vote yes or no or to obey the current agreement. If the vote is for an abeyance, it must be with instructions to the individuals.

COUNCILMAN REESE remarked that he does not want to change the rules but feels he was not given a chance to ask questions of staff. There are two sides, now he is more confused and feels this is not the right thing to do at this time.

COUNCILMAN BARTLOW was leaning toward making a motion for approval.

MR. GIBSON clarified for COUNCILMAN TARKANTIAN that as part of the presentation made to staff, Vegas.com offered \$1.00.

COUNCILMAN WOLFSON expressed his concerns rushing to judgment, what is best for the City will control which way he will vote and fairness. He appreciates a company coming forward and negotiating in good faith, but it seems that circumstances have come forward where government is working backwards. He wished he had known this before being asked to take action.