



Legislation Details (With Text)

**File #:** 19-547      **Version:** 1      **Name:**

**Type:** Public Hearing/General Business      **Status:** Agenda Ready

**File created:** 4/26/2019      **In control:** City Council and Authorities Concurrent

**On agenda:** 5/21/2019      **Final action:**

**Title:** Update and Action on the Formation of a New Destination Marketing Organization (DMO) entity and Appointment of a Board of Directors

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. POST MEETING MATERIAL

Date	Ver.	Action By	Action	Result
5/21/2019	1	City Council and Authorities Concurrent	Approved	Pass

**REPORT TO COUNCIL**

**SUBJECT**

Update and Action on the Formation of a New Destination Marketing Organization (DMO) entity and Appointment of a Board of Directors

**BACKGROUND**

On April 9, 2019, City Council directed the City Manager to commence work efforts to form a new destination marketing organization (DMO) to provide convention and visitor services such as a Convention-Visitors Bureau (CVB). Council actions included approval of: a governance model whereby the City contracts directly with a nonprofit DMO and Convention Center operator; the configuration of the initial Board of Directors with added direction to increase the number of board members from seven to nine; and the approval of the DMO to be fully supported with public funds from the Tourism Improvement District (TID) and use of General Fund dollars to advance implementation and seek reimbursement when TID reserves are available for expenditures (Fall 2019, 1 Year term).

The purpose of this report is to provide the Council with an update on the organization’s formation and to appoint the Board of Directors for the new entity.

**DISCUSSION**

Section 501(c)(6) of the Internal Revenue Codes provides a federal tax exemption for business and other professional leagues that are not organized for profit. The Chamber which used to have a contract to perform convention and visitor services currently has a fictitious business name statement on file with the County Recorder under the name “Santa Clara Chamber of Commerce and Convention-Visitors Bureau”. Staff has not determined whether use of the name Santa Clara Convention and Visitors Bureau (CVB) will be an issue or whether some other name for the organization should be used.

A new entity will be incorporated as a California nonprofit mutual benefit corporation and obtain IRS designation as a 501(c)(6) nonprofit organization whose mission would be focused on promoting the long-term development and marketing of Santa Clara, with emphasis on convention sales, tourism marketing and service. In executing its mission, the new DMO entity would also create awareness about Santa Clara and book meetings and business events.

Retaining of non-profit corporate attorney will be required to support the formation of the new entity and serve as its legal counsel. Legal support will include among other items the development of the Articles of Incorporation and Bylaws; review of any conflict of interest matters for the Board of Directors; and, assist with the search and hiring of an Executive Director for the new entity.

Three key steps in the initial formation of this new entity and discussed in this report include:

- Filing of Articles of Incorporation and Drafting Bylaws;
- Appointment of the Board of Directors; and,
- Executive Director Recruitment and Appointment.

#### Creation of Articles of Incorporation and Bylaws

The first step in forming a nonprofit corporation is the filing of the formation document, otherwise referred to as the articles of incorporation, with the California Secretary of State. The articles of incorporation define the business purpose and identify a registered agent for the corporation.

The bylaws establish the structure of the board, frequency of board meetings, how board members are chosen and other details about the board, its committees and its officers. The bylaws also specify a chair of the board, vice-chair, treasurer, and executive director as corporate officers.

#### Appointment of the Board of Directors

At the time of the filing of the Articles of Incorporation the initial Board of Directors will be designated. On April 9, 2019, the Council approved a framework of the initial Board of Directors for the new DMO entity. That framework included a seven-member Board of Directors with additional two ex-officio positions comprised of the following representatives:

- Hotel (participating in the TID) (2)
- Organized Labor (1)
- Cedar Fair (1)
- Agency/Business (1)
- Related (1)
- Other (1)
- Ex-Officio - Convention Center (1)
- Ex-Officio - City Manager's Office (1)

The Board of Directors will have fiduciary responsibility over the corporation, supervise the executive director and have accountability for organization's performance in accordance with a future City contract. Identification of the potential Board members were considered with the following characteristics:

- Have direct knowledge about the new organization's mission;
- Are service professionals and have knowledge/expertise in the convention, tourism, hospitality and/or entertainment industry;

- Prepared for time commitment to attend meetings;
- Do not have a conflict of interest and have strong values and personal integrity; and
- Understand organizational metrics and key performance indicators.

Since the April 9, 2019 Council meeting, there has been additional discussion and requests regarding the Board of Directors which has caused for the Administration to propose a slightly different composition to cure any future potential conflicts of interest, balance stakeholder participation, and ensure representative voting rights where it is well-matched for stakeholder interests. We are fortunate that this endeavor has garnered interest from stakeholders and that there is the willingness to participate and support this effort.

Learning from past actions, this new DMO entity will require the oversight and direction of a Board of Directors who will be charged with the overall responsibilities of governing the various activities in support of the organization. The new DMO entity will be responsible to the City through an agreement for performance of its mission and duties and will be publicly-funded by the Tourism Improvement District (TID), which will require reporting to and approvals by the City Council. Given that public funds are involved in supporting the DMO, the Board must act in full compliance with the procedural requirements necessary where the use of public funds are involved to support certain activities that advance the mission of this organization. As this is a key requirement of the Board, the role of the SCSA/City appointee is particularly important, as well as the Ex-Officio (e.g., City Manager) to ensure compliance and Board awareness of decision-making requirements where public funds are involved. Further, the Board will be offered training opportunities to ensure that it is aware of both the proper use of public funds, as well as overall awareness of governance within this context.

Below is additional information that the City Council should be aware of as it considers appointment of the Board of Directors and future expansion of the Board, as suggested in the April 9, 2019 City Council meeting:

**Hotels/TID** - While the April presentation to Council provide for two slots for Hotel/TID representation, at the May 9, 2019 TID Advisory Board meeting, the hotels made a request for additional representation through an additional Board of Directors seat or the allocation of the “Other” slot that the Council designated.

**Organized Labor** - Following the April 9 Council meeting, Labor also requested additional representation - equal to that of the hotels, businesses represented (e.g., Related and Cedar Fair), and SCSA/Other categories. In discussions with Mr. Ben Field, South Bay Labor Council, the request was made for an additional Board of Directors seat or the allocation of the “Other” slot that the Council designated.

**Convention Center (Spectra)** - As the focal venue for the marketing and sales efforts of the CVB, the Convention Center has a significant interest in the mission, operation and success of the DMO. Spectra requested a voting position on the Board of Directors.

**SCSA/ “Other”** - At the April meeting, there was discussion about possibly adding a member of the Santa Clara Stadium Authority (SCSA) Board to the DMO Board to represent the interests of SCSA and the Levi’s Stadium. Upon further evaluation, given that the City Councilmembers are also members of the SCSA Board, it was determined that if a member of the SCSA Board were to also

participate as a DMO Board member, the member could have a conflict on any matters presented to the Council related to the DMO, including a contract for funding. The member would not be eligible to vote on the contract. Therefore, staff is not recommending the appointment a City Councilmember and, rather, a City staff member with background in this area. Accordingly, the Administration recommends the amendment to the SCSA slot to a City slot and the appointment of Nadine Nader, Assistant City Manager.

Nadine was one of the primary executive staff members for the City of San Jose to assist with the development of and the request for proposals for a new San Jose McEnery Convention Center operator was and worked on the transition of the selected vendor to begin operating the San Jose McEnery Convention Center. Nadine also worked on the procurement of an operator for the Hayes Mansion Hotel, which included its conference center and event operations. At that time, she worked with the team to ensure that the Council's objectives of decreasing costs of operations and increasing occupancy and revenue producing capabilities of the facilities were met, while also ensuring innovative employment relationships between the new operator and the City were introduced.

With respect to the "Other" slot and the interest in it by the Hotels, Organized Labor and the Convention Center Operator (Spectra), the Administration proposes the assignment of that slot to the Convention Center Operator (Spectra).

To accommodate the interests of both the hotels and Organized Labor, and the valid interest in balanced representation of stakeholder interests, the Administration is proposing the configuration as illustrated in Table 1. Essentially, the Hotel interest would remain at two slots, until further action by the Council, and be represented by both a hotel with labor represented employees and one without labor represented employees. This addresses the concerns of Organized Labor while also maintaining the interest of the hotels, until further action is considered by the Council. The Hotel/TID representation reflects 1) a seat for the current TID chair and the hotel attached to the Convention Center and 2) a seat for a hotel that has an agreement with organized labor. This proposal also inserts a vote by the Convention Center Operator which appears prudent and necessary at the inception of this endeavor.

**Ex-Officio** -The City staff appointment of Nadine Nader allows for both City Manager Deanna Santana and Assistant City Manager Ruth Shikada to continue to work administratively to support the advancement of this effort, which allowing Nadine to assume the Board roles. There are no conflicts presented with this configuration as articulated earlier in this report. Additionally, the Ex-Officio slot provides sufficient flexibility for both Ruth and Deanna to represent the City in that capacity while working administratively. It should be noted that the City Manager is certified in governance and corporate directorship by both the Harvard Business School and National Association of Corporate Directors, which will lend itself to a network of training and insights of proper governance.

With this very useful input, staff is recommending the following changes to the composition of the initial Board of Directors:

**Table 1: Proposed Board of Directors**

	<b>Representative</b>	<b>Name</b>	<b>Title</b>	<b>Agency</b>
1	Hotel / TID	Eron Hodges	General Manager	Hyatt Regency Santa Clara
2	Hotel / TID	Joe Eustice	General Manager	Santa Clara Hilton
3	Organized Labor	TBD	TBD	Representation from either Teamsters or IATSC, at the time of writing this report the decision will still being considered
4	Cedar Fair	Manny Gonzales	Vice President / General Manager	CA Great America
5	SCSA/City	Nadine Nader	Assistant City Manager	City of Santa Clara
6	Related	Stephen Eimer	Executive Vice President	Related Urban
7	Convention Center	Kelly Carr	General Manager	Convention Center
	City Manager's Office	Deanna Santana or designee	City Manager	City of Santa Clara (Ex-Officio)

Following the appointment of the initial Board of Directors, the Bylaws will provide a process by which successor Board members will be appointed in accordance with input of the initial stakeholder groups.

Executive Director Recruitment and Appointment

An early responsibility of the Board will be to hire an Executive Director. Recruiting and hiring of an Executive Director skilled at managing convention and visitor services activities, familiar with the region, and the use of public funds will be required as basic skills. The Board will have the opportunity to add additional desirable qualifications that support the CVB mission.

The Executive Director is a critical position for the new entity. The Executive Director is responsible for implementing the policy direction of the DMO Board of Directors and is responsible for the execution and management of the daily activities of the organization. The Executive Director job description is currently being developed and recruitment is anticipated to begin within the next month with the goal to identify and hire a selected candidate by the end of July. This position and all other staff positions would be employed by and paid for by the new CVB utilizing funds from collected

through the TID, until such time that other revenue streams are developed.

### TID

A special meeting with the TID Advisory Board took place on May 9. During this meeting the TID Advisory Board was provided with an update on Convention Center transition activities and the progress on the development of the CVB. The TID was supportive of the approach and timing as outlined in this report. As noted above, the TID provided feedback on the composition of the initial CVB Board of Directors.

The TID Advisory Board also discussed with City staff the TID's interest in an alternate method of collection of funds. An alternate method may enhance the total dollars collected by the TID on an annual basis which will further assist the CVB. The City will work with the TID on the analysis and provide the Council with periodic updates on the progress, with a proposal anticipated before the next budget approval process by the City Council.

### Next Steps

Following formal appointment of the Board of Directors, the board members will be convened for the initial meeting to review/approve the mission and corporation bylaws. Additionally, a discussion about training will be prepared for the Board and determination of overall governance protocols.

Recruitment efforts to hire the Executive Director will begin and concurrently the Board of Directors and City will work to develop performance measures for a future operating agreement. Once finalized, the operating agreement will be brought back to the Council for review and consideration.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

The fiscal impact is minimal. There are one-time filing fees associated with the application for federal and state nonprofit status, and the City will incur minor secretary of state filing costs associated with filing the articles of incorporation.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

Direct the City Manager to proceed with the formation of the new DMO entity including causing the appointment of the initial Board of Directors as set forth in Table 1.

Reviewed by: Ruth Shikada, Assistant City Manager  
Approved by: Deanna J. Santana, City Manager