



## Agenda Report

19-920

Agenda Date: 11/12/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Discussion and Direction on the Conversion of the Santa Clara Tourism Improvement District (TID) Established Under the Parking and Business Improvement Area Law of 1989 to a TID Established under the Property and Business Improvement District Law of 1994

#### **EXECUTIVE SUMMARY**

Lodging businesses located within the Santa Clara Tourism Improvement District are interested in establishing the district under the Property and Business Improvement District Law of 1994 (1994 Law). Concurrently, the lodging businesses are interested in changing the assessment from \$1.00 per occupied room night to 2% of gross revenue of short-term room rentals. Staff is seeking direction from the Council on the proposed changes sought by the lodging businesses.

#### **BACKGROUND**

The existing Santa Clara Tourism Improvement District (TID) was formed in 2005 pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Law). On January 11, 2005, City Council approved Ordinance No. 1797 (the "Ordinance") amending the Santa Clara Municipal Code and establishing TID. The Ordinance established the boundaries of the TID, which currently includes eleven hotels near the Santa Clara Convention Center: AC Hotel Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element Santa Clara, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The Plaza Suites, and TownePlace Suites by Marriott.

The Ordinance also established a District Advisory Board (the "Advisory Board") to administer the affairs of the TID. The Advisory Board is constituted of the general managers from the lodging businesses within the TID and all hotels collect a \$1.00 fee from hotel guests on each occupied hotel/motel room night within the district boundaries.

In 1994, the State Legislature passed the Property and Business Improvement Law, adding Sections 36600, et seq., to the California Streets and Highways Code. The 1994 Law is based upon the belief that there is a particular local benefit to be derived from allowing business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements. The 1994 Law includes procedural differences for the District, as compared with the 1989 Law.

#### **DISCUSSION**

Many tourism improvement districts have undergone a public process to disestablish under the 1989 Law and reconstitute under the 1994 Law. Tourism improvement districts throughout California are primarily formed pursuant to the 1994 Law.

Lodging businesses in the Santa Clara TID are interested in establishing the district under the 1994 Law. If established under the 1994 Law, the new district, the Santa Clara Tourism Improvement District (SCTID), would operate in accordance with a Council-approved management district plan. A draft SCTID Management District Plan (MDP) has been prepared with the assistance of Civitas Advisors and provides the overall format and budget for SCTID activities. This draft MDP is provided for reference purposes only.

### Governance

Under the 1989 Law, City Council appointed the TID Advisory Board to administer the affairs of the TID based upon Council's budget approval. Under the 1994 State Law, the appointment of an advisory board is not required, rather it provides that a district is operated through an owners' association that is a private non-profit corporation, under contract with the City to administer or implement improvements, maintenance, and activities specified in the MDP and manage the affairs of the SCTID. The City would provide general oversight, the manner and extent of which is being determined, while the non-profit would be responsible for the day-to-day operations.

The Silicon Valley/Santa Clara Destination Marketing Organization (DMO) recently incorporated in August 2019 and is composed of nine Directors. Eight of the Board seats are filled, and staff is working to fill the last vacancy:

- Two (2) Directors representing lodging businesses in TID;
- Two (2) Directors representing local union groups;
- One (1) Director representing the Santa Clara Convention Center;
- One (1) Director representing the travel and tourism industry;
- One (1) Director representing large businesses in Santa Clara;
- One (1) Director representing the City of Santa Clara; and
- One (1) Director representing the technology industry.

A report on the status of the formation of the DMO is a separate item on the November 12 Council agenda (RTC# 19-1257).

As noted in the draft MDP, it is proposed the Silicon Valley/Santa Clara DMO be designated as the owners' association of the SCTID to manage funds and implement programs in accordance to the MDP. The Silicon Valley/Santa Clara DMO would also be responsible for providing annual reports to the City Council at the end of each year of operation of the district.

The 1994 State Law considers the owners' association a legislative body and is therefore, subject to the Ralph M. Brown Act and the California Public Records Act. As such, all activities and meetings of the Silicon Valley/Santa Clara DMO Board of Directors, as it would relate to SCTID assessment funds and activities, would have to follow the Brown Act and be subject to Public Records requests.

### District Boundary

The proposed SCTID boundary includes lodging businesses near the Santa Clara Convention Center. The proposed boundary would not change from what is currently established and would include all lodging business, existing and in the future. There are currently 11 hotels within the proposed boundary: AC Hotel Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element Santa Clara, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The

Plaza Suites, and TownePlace Suites by Marriott. Any lodging business that opens after the formation of the district would be automatically included in the district.

Staff is in the process of determining the manner in which, and extent to which, the SCTID requirements could apply to short-term rentals, such as those advertised on Airbnb.

#### District Assessment Formula

The process to change the district assessment method can be completed independently from the conversion process; however, the timing for City Council to consider a change aligns to the current effort being proposed and therefore is being brought forth at this time. The final assessment formula is to be further determined by City Council and if approved with the conversion process, would be incorporated into the MDP.

The lodging businesses within the TID collect a \$1.00 fee from hotel guests on each occupied hotel/motel room night and this is the same assessment formula that has been used since the TID was formed in January 2005. It is the desire of the TID lodging businesses to change the assessment from \$1.00 per occupied room night to 2% of gross revenue on short-term room rentals (30 days or less). Feedback from the TID lodging businesses indicate that a percent assessment would allow for a fairer assessment formula as the larger hotels would pay proportionately more into the assessment than the smaller hotels as the larger hotels generally have a higher average daily rate (ADR) and derive more direct benefit from the programs funded by TID dollars. Additionally, the TID hotels see this as opportunity to increase funds to directly support sales, marketing and promotional efforts with the goal of increasing hotel occupancy in the district and overall visitor spending in the tourism market. At 2% of gross revenue on short-term room rentals, it is estimated the SCTID could generate approximately \$3.75 million annually. The current TID revenue is around \$800,000 annually.

A policy consideration on the conversion of the district assessment formula from \$1.00 per occupied room night to 2% of the gross revenue on short-term room rentals is the overall Transient Occupancy Tax (TOT) being charged. Staff provided a report to Council at its November 5, 2019 meeting regarding the City's financial outlook and potential opportunities for revenue enhancement. One of those opportunities is an increase in the TOT for General Fund purposes.

The current TOT rate within with the TID boundary is 11.5% (General City TOT is 9.5% and the Community Facilities District is an additional 2%). Table 2 outlines the General City TOT rates in the area.

**Table 2 - Transient Occupancy Tax Rates****Transient Occupancy Tax by City**

<b>City</b>	<b>Rate</b>
Gilroy	9.0%
<b>Santa Clara (w/o CFD)</b>	<b>9.5%</b>
Morgan Hill	10.0%
Saratoga	10.0%
Fremont	10.0%
Mountain View	10.0%
San Jose	10.0%
<b>Santa Clara (w/ CFD)</b>	<b>11.5%</b>
Los Altos	12.0%
Campbell	12.0%
Cupertino	12.0%
Los Gatos	12.0%
Sunnyvale	12.5%
Milpitas	14.0%
Palo Alto	15.5%

The collection method of the district funds by the City would not change. The assessment from the lodging businesses would be collected at the same time the City collects the Transient Occupancy Tax from those businesses. The lodging business would be responsible for submitting the assessment to the City who would then transfer the funds to the DMO, the owners' association of the SCTID.

Staff are working with the lodging businesses to address items that surfaced from the TID Audit; one of which was the variances in how the lodging businesses were applying the assessment fee. To ensure ongoing consistency, the proposed MDP clearly outlines situations whereby the collection of assessments would be exempt subject to claim requirements to be submitted to the City for approval.

#### **Budget and Services**

Monies raised with the assessment must directly benefit the lodging businesses paying the assessment. SCTID funds would be used to support destination marketing initiatives as outlined in the MDP designed to increase overnight visitation and room night sales of the lodging businesses in the SCTID.

Based on a 2% assessment formula, the first-year annual budget as proposed in the MDP is summarized in Table 3 below.

**Table 3- Proposed SCTID Budget**

<b>Program</b>	<b>Description</b>	<b>Budget</b>
Convention Sales, Incentives, and Services (50%)	Promote sales activity for the booking of Convention Center events and increased room night sales of attendees; Provide financial incentives to current and new clients.	\$1,875,000
Marketing & Communications (30%)	Promote SCTID lodging businesses through internet marketing efforts, attendance at trade shows, lead generation activities, production and distribution of tourist-related marketing collateral, etc.	\$1,125,000
Administration (15%)	For administrative staffing costs, office costs, policy development and other general administrative costs such as insurance, legal, and accounting fees.	\$562,500
Contingency/Reserve (3%)	Held in a reserve fund or could be utilized for other program, initiative, administration or renewal costs; at the discretion of the DMO.	\$112,500
City Collection Fee (2%)	Paid to the City to cover costs of collection and administration.	\$75,000
	<b>TOTAL</b>	<b>\$3,750,000</b>

A change in the rate would impact the proposed budget and programs of the TID/DMO.

It should be noted that the previous Convention and Visitor's Bureau operated by the Santa Clara Chamber of Commerce was provided approximately \$1.5 million in City funding from the General Fund on an annual basis. Therefore, annual funding for convention and visitor programs was approximately \$2.3 million (\$1.5 million from the City and \$800,000 from the TID). A change in the assessment method from \$1 per occupied room night to a percentage of the gross revenue on short-term room rentals provides the future DMO with replacement funding without any direct contribution from the General Fund. All General Fund monies for CVB/DMO operations have already been removed from the City Operating Budget and 10-year forecast.

#### District Term

Currently, the TID can only be renewed for a one-year term. Under the 1994 Law, the SCTID can be initially formed for up to five years and renewed for up to ten years.

The draft MDP notes an initial term based on the calendar year however, staff is proposing the term of the SCTID, if established, be aligned to the City's Fiscal Year. It will also be important to ensure that the conversion effort aligns with the ongoing development of the DMO.

The lodging businesses in the TID are interested in establishing the new district and to begin collection of the new assessment as soon as possible. The current TID term does not expire until June 30, 2020 and a concurrent process to disestablish the TID would be required if the establishment of the new district were to occur prior to its expiration. Alternately, efforts to establish the new district could be initiated so that it is formed effective July 1, 2020. In this case, the current TID term could naturally expired and no further action would be required.

#### SCTID Formation Process Under the 1994 Law

The driving force to form a district is normally through a request from the businesses that will be subject to the assessment, in this case, the lodging businesses. However, as only cities and counties can form such districts, request for the formation of a district are made to the local legislative body and the legislative body then follows the process dictated by the 1994 Law.

The 1994 Law requires a thorough approval process, which begins with submission of petitions from the lodging businesses that will be assessed in the district.

Resolution of Intention Hearing: Upon the submission of a written petition, signed by the lodging businesses in the proposed district who will collectively pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to establish a district by the adoption of a resolution expressing its intention to establish a district.

Notice: The 1994 Law requires the City to mail written notice to the lodging businesses proposed to be within the new district. Mailing the notice begins a mandatory forty-five (45) day period in which lodging businesses may protest the formation of the SCTID.

Public Meeting: A public meeting is required to allow public testimony on the formation of the SCTID and levy of assessments. No Council action would be required at this time.

Final Public Hearing: If written protests are received from the lodging businesses in the proposed SCTID which will collectively pay more than fifty percent (50%) of the assessments, and are not withdrawn prior to the hearing, then the City Council can take no further action to levy the proposed assessment for a period of one (1) year.

At the conclusion of the public hearing to establish the SCTID, the Council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessment.

If the Council, following the public hearing, decides to establish the proposed SCTID, the Council shall adopt a resolution of formation.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

**FISCAL IMPACT**

Under the current TID, the City administrative fee is \$3,000. If the SCTID is established under the 1994 Law, the City administrative fee increases to approximately \$75,000 annually (2% of the total assessment collected) to cover administrative and collection costs.

**COORDINATION**

This report has been coordinated with the Finance Department and 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.

**ALTERNATIVES**

1. Provide direction to proceed with the conversion of the Santa Clara Tourism Improvement District (TID) established under the Parking and Business Improvement Area Law of 1989 to a TID established under the Property and Business Improvement District Law of 1994.
2. Provide direction to continue the TID under the 1989 Law.
3. Provide direction regarding the District assessment formula.
4. Any other action as directed by Council.

**RECOMMENDATION**

1. Alternative 1: Provide direction to proceed with the conversion of the Santa Clara Tourism Improvement District (TID) established under the Parking and Business Improvement Area Law of 1989 to a TID established under the Property and Business Improvement District Law of 1994;  
and
2. Alternative 3: Provide direction regarding the District assessment formula.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Santa Clara Tourism Improvement District Management District Plan (Draft)