



## Agenda Report

21-3589

Agenda Date: 1/26/2021

### 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.

#### **COUNCIL PILLAR**

Promote and Enhance Economic, Housing and Transportation Development

#### **EXECUTIVE SUMMARY**

Lodging businesses located within the Santa Clara Tourism Improvement District (TID) are interested in establishing a 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 a maximum of 2% of gross revenue of short-term room rentals.

The TID conversion process was initiated in FY 2019/20. With the onset of the COVID-19 pandemic and the uncertainty of the economic effects of the pandemic, the conversion process was subsequently put on hold with Council direction to revisit the conversion process at a later time. As the TID has continued interest in pursuing this effort, this staff report provides a summary of 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 11 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 TID 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

several procedural differences for the TID, as compared with the 1989 Law. Attachment 1 provides a comparison of the major differences between the two laws.

A general timeline of the conversion effort is as follows:

- With the loss of \$1.5 million in annual City funding for convention and tourism promotion, on November 12, 2019, the TID Advisory Board decided to pursue formation of a new district under the 1994 Law.
- On February 11, 2020 - Council provided direction to allow for a change to the TID assessment to 1.5% of gross short-term rental revenue with the potential of an increase to 2% subject to Council's review of the proposed budget.
- On March 24, 2020 - Amid the unknown impacts due to COVID-19, Council directed staff to return with flat rate assessment options for consideration rather than proceed with a percentage-based assessment.
- On April 8, 2020 - Council directed staff to continue the TID as formed under the 1989 Law and to revisit the conversion at a later time.

The TID is still interested in pursuing this effort as a means to fund convention and tourism promotion.

## **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. The draft MDP is provided for Council's preliminary review.

## **Governance**

Under the 1989 Law, 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. The owners' association would be tasked to administer or implement improvements, maintenance, and activities specified in the MDP and to manage the affairs of the SCTID. The City would provide general oversight while the non-profit would be responsible for the day-to-day operations.

The Silicon Valley/Santa Clara DMO, Inc. (SVSC DMO) incorporated in August 2019 and its Board is comprised of nine to 13 voting members. Table 1 below lists the DMO's Officers and Directors.

**Table 1 - DMO Board of Directors**

<b>Organization</b>	<b>Name</b>	<b>Title</b>
California's Great America	Manny Gonzalez	Vice-Chair
City of Santa Clara	City Manager or designee	Ex-Officio
City of Santa Clara	Nadine Nader	Member
Development Strategy Group LLC	Carlene Matchniff	Member
Forty Niners Stadium Management Company	Catherine Lentz	Member
Hilton Santa Clara	Joe Eustice	Member
Hyatt Santa Clara	Eron Hodges	Chair
International Alliance of Theatrical State Employees - Local 134 Silicon Valley/ Santa Clara County	Leo Wandling	Treasurer
International Brotherhood of Teamsters - Local 853	Pablo Barrera	Member
Santa Clara Convention Center	Kelly Carr	Member
Silicon Valley/Santa Clara DMO, Inc.	Matt Stewart	Secretary/ Ex-Officio
Technology Industry	Vacant	Member

The SVSC DMO is the designated Destination Marketing Organization of the City and on October 27, 2020, Council authorized an agreement with SVSC DMO for destination marketing services. As noted in the draft MDP, the SVSC DMO is proposed as the owners' association of the SCTID to manage funds and implement programs in accordance to the MDP. The SVSC DMO would be responsible for providing annual reports to 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 SVSC DMO Board of Directors, as it would relate to SCTID assessment funds and activities, would be required to comply with the Brown Act and would be subject to public record requests. The 1994 Law does not stipulate compliance with the Political Reform Act and the Fair Political Practices Commission. Requirements by the owner's association in this regard is currently being researched by the City Attorney's Office.

#### **District Boundary**

The proposed SCTID boundary includes lodging businesses near the Santa Clara Convention Center. The proposed boundary would not change from the current boundary and includes all lodging businesses within the area - 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 new district would be automatically included in the district.

#### **District Assessment Formula**

Under the 1989 Law, the existing TID must be renewed on an annual basis. The process to change the TID assessment method can be completed independently from the conversion process; however, the timing for Council to consider a change aligns to the current effort being proposed and therefore is being brought forth concurrently (i.e., if Council authorizes the conversion under the 1994 Law, the district under the 1989 Law would expire on its own as of July 1, 2021). The final assessment formula is to be further determined by 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. This is the same assessment formula that has been used by the TID since its formation in January 2005. Until FY 2019/20, the City provided the previous Convention and Visitor's Bureau with \$1.5 million dollars annually from the General Fund. The loss of direct ongoing City funding had significant impact on the implementation of an overall tourism marketing strategy. Understanding that direct City funding was no longer viable to fully fund a destination marketing organization, the TID lodging businesses and City staff worked together to create a new model to deliver convention/tourism marketing and promotion services with a corresponding funding source.

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). Under the existing \$1.00 assessment, TID revenues pre-COVID-19 were approximately \$800,000 on an annual basis. Revenue of this amount does not provide for adequate funding of a DMO and the execution of its mission without further subsidies from the City. As such, the lodging business propose to implement a 1.5% assessment for the initial year and to increase to 2% in year two, subject to Council's approval.

Feedback from the TID lodging businesses indicate that a percentage-based 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 and derive more direct benefit from the programs funded by TID dollars. Additionally, the TID lodging businesses see this as an 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. As stated in the MDP, it is estimated the SCTID could generate approximately \$610,936 annually with a 1.5% assessment rate. The projected revenue takes into consideration reduced collections due to COVID-19 and conservative revenue projections for subsequent years as the industry recovers.

The collection method of the TID 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.

#### 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 1.5% assessment formula, the first-year annual budget as proposed in the MDP is

summarized in Table 2 below.

**Table 2 - Proposed SCTID Budget**

<b>Program</b>	<b>Description</b>	<b>Budget</b>
Convention Sales, Incentives, and Services (40%)	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.	\$244,374
Marketing & Communications (20%)	Promote SCTID lodging businesses through internet marketing efforts, attendance at trade shows, lead generation activities, production and distribution of tourist-related marketing collateral, etc.	\$122,187
Administration (35%)	For administrative staffing costs, office costs, policy development and other general administrative costs such as insurance, legal, and accounting fees.	\$213,828
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.	\$18,328
City Collection Fee (2%)	Paid to the City to cover costs of collection and administration.	\$12,219
	<b>TOTAL</b>	<b>\$610,936</b>

The existing fund balance of TID assessment funds would transfer to the newly established district and available for DMO activities. Additional budget may be allocated to each program as deemed necessary by the DMO Board subject to Council approval.

#### **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 current TID term expires June 30, 2021 and efforts to establish the new district could be initiated so that it is formed effective July 1, 2021. 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 \$12,219 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>>.

**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 to proceed with an initial District assessment formula of 1.5% of gross room revenue and increasing to 2% in Year Two.
4. Any other action as directed by Council.

**RECOMMENDATION**

Alternatives 1 and 3:

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
3. Provide direction to proceed with an initial District assessment formula of 1.5% of gross room revenue and increasing to 2% in Year Two.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Comparison of the 1989 and 1994 Laws
2. Santa Clara Tourism Improvement Management District Plan (Draft)