

Sarah Mayer Public Comment - Group 1

A-21



From: Kate Griffith <kate@flyinggoatcellars.com>
Sent: Saturday, May 4, 2024 12:12 PM
To: sbcob
Cc: Norman Yost
Subject: BOS Agenda item May 7, 2024 -Civitas & Wine BID
Attachments: SBCO - Wine BID Res 6367.pdf

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Hello! Just a reminder that Lompoc wineries oppose the Santa Barbara County Vintners Association proposed wine BID (preserve) that will be discussed at the BOS meeting on Tuesday, May 7, 2024.

Cheers, Kate Griffith

Flying Goat Cellars
Lompoc, CA
805-588-0996



October 26, 2020

County of Santa Barbara
Board of Supervisors
Chief Deputy Clerk of the Board
105 East Anapamu, Room 407
Santa Barbara CA 93101

**RE: City of Lompoc Resolution No. 6367(20) – Opposing Inclusion of Lompoc in
Santa Barbara County Wine Preserve Business Improvement District**

Dear Ms. Alexander:

Enclosed, you will find one original copy of the City of Lompoc Resolution No. 6367(20), which was approved by a unanimous vote of the entire City Council on November 20, 2020.

If there are any questions or concerns regarding this matter, please contact this office at (805) 875-87241 or City Manager Jim Throop at (805) 875-8212.

Thank you,

A handwritten signature in blue ink that reads "Stacey Haddon".

Stacey Haddon
City Clerk
City of Lompoc

Enc.

100 Civic Center Plaza, Lompoc, CA 93436
PHONE: 805-875-8241 FAX: 805-875-8740

ORIGINAL

RESOLUTION NO. 6367(20)

**A Resolution of the City Council of the City of Lompoc,
County of Santa Barbara, State of California,
Opposing Inclusion of Lompoc in Santa Barbara County
Wine Preserve Business Improvement District**

WHEREAS, Santa Barbara County Vintners (Vintners) has proposed that Santa Barbara County (County) create a wine business improvement district, which Vintners is calling the "Santa Barbara County Wine Preserve" (BID); and

WHEREAS, under Vintner's proposal, the BID would assess a 1% fee on direct-to-consumer (DTC) wine sales that incur California sales tax; and

WHEREAS, Vintners has proposed that the County be the lead government agency that creates the BID, but Vintners would like the BID to include all wineries within the boundaries of the County, including unincorporated areas and cities within the County, including Lompoc; and

WHEREAS, pursuant to Streets and Highways Code Sections 36521.5 and 36620.5 the County may not create a BID within the territorial jurisdiction of Lompoc without the consent of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council is opposed to creation of the BID.

SECTION 2. The City Council does not consent to the inclusion of the City of Lompoc in the BID.

SECTION 3. This Resolution is effective upon its adoption.


SECTION 4. The City Clerk is directed to send a signed copy of this Resolution to the Santa Barbara County Board of Supervisors.

The foregoing Resolution was proposed by Council Member Mosby, seconded by Council Member Vega, and was duly passed and adopted by the Council of the City of Lompoc at its regular meeting on October 20, 2020, by the following vote:


AYES: Council Member(s): James Mosby, Victor Vega, Gilda Cordova, Dirk Starbuck, and Mayor Jenelle Osborne.

NOES: Council Member(s):

ABSENT: Council Member(s):


Jenelle Osborne, Mayor
City of Lompoc

ATTEST:


Stacey Haddon, City Clerk
City of Lompoc

Sarah Mayer

From: David deLaski <david@solminer.com>
Sent: Monday, May 6, 2024 10:33 AM
To: sbcob; Joan Hartmann; Meighan Diethofer
Subject: Public comment letter for May 7 BOS meeting Agenda #21
Attachments: public_comment_5_7_24_Agenda21.pdf; HJTA_Wine BID Letter 9-30-20.pdf

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Greetings,

I would like to submit a letter of public comment for Agenda Item 21 along with a letter that I refer to in my comments. I kindly ask for the board to review and they be placed into public record.

Best,
David deLaski

(He/Him/His)



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May 7, 2024

Subject: Objection to Proposed Business Improvement District Assessment Based on Confidential Business Tax Information – File 24-0047 Agenda # 21

Dear Santa Barbara County Board of Supervisors,

I am a small winery owner writing to express my strong objection to the proposed creation of a Business Improvement District (BID) by the Vintners Association, which would involve accessing my confidential business tax information for the purpose of determining an assessment based on sales. This approach not only raises significant concerns regarding the privacy and confidentiality of sensitive business data but also oversteps the appropriate jurisdictional boundaries.

The creation of a Wine BID was initiated by the Vintner's Association in 2018 but was abruptly dropped in late 2020 due to opposition from wineries, a resolution banning the BID by Lompoc City Council and the concern of legal action from taxpayer advocates. A few months ago, the Vintner's Association and Civitas suddenly revived the BID process, again proposing a 1% assessment based on taxable sales for all wineries located in Santa Barbara County. It is pertinent to note that the current proposal mirrors what was discontinued in 2020. Moreover, certain proposals such as the use of collected assessments toward non-marketing expenses like "advocacy and government engagement," have returned even though they were deemed questionable by your board and removed by the Vintner's because they do not meet the terms of specific benefit as required by BID law.

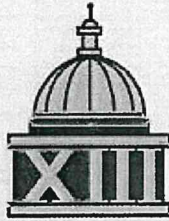
As outlined in the attached 2020 letter sent to the county by the Howard Jarvis Taxpayers Association, the Master District Plan for the Wine BID requests the county serve as the sponsoring lead governmental agency in authorizing a sales-based fee, which (according to Jarvis) constitutionally amounts to a tax. Jarvis makes the case that this sales-based assessment is a tax and levying taxes, particularly sales taxes, falls under the purview of the state government, requiring approval by voters, rather than local county and city authorities. The fact that you are today considering the release of confidential sales tax data to the Vintner's Association via Civitas to create this assessment only confirms that it is a form of tax. The Vintner's Association is also advising businesses to add the 1% assessment at the bottom of a customer sales order in the same manner as a sales tax.

I urge the Board of Supervisors to thoroughly evaluate whether implementing a Business Improvement District (BID) with a sales-based assessment is suitable for the entirety of Santa Barbara County. Additionally, I implore you to request the Vintner's Association explore alternative methods for collecting dues that preserve the confidentiality of business tax information and avoid imposing unfair taxes on businesses within the county. It is imperative that any initiatives aimed at fostering economic development for the wine industry and greater community improvement are pursued within the bounds of legal and ethical frameworks, with due respect for the rights and interests of all stakeholders involved.

Thank you for considering my concerns on this matter. I trust that you will give careful deliberation to the implications of the proposed BID and take appropriate action to uphold the principles of fairness, transparency, and respect for privacy in governance.

Best,
David deLaski
Owner, Solminer Wine Company

HOWARD JARVIS, Founder (1903-1986)
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs



HOWARD JARVIS
TAXPAYERS ASSOCIATION

SACRAMENTO OFFICE:
921 11th Street, Suite 1201
Sacramento, CA 95814
(916) 444-9950, Fax:(916) 444-9823
www.hjta.org

September 30, 2020

Michael Ghizzoni
Office of County Counsel
105 E. Anapamu Street, Suite 201
Santa Barbara, CA 93101
adcbruin@co.santa-barbara.ca.us

Re: Vintners Association's Proposed Santa Barbara County Wine Business Improvement District (Wine BID)

Dear Mr. Ghizzoni:

This letter regards the Vintners Association's proposed Wine BID for Santa Barbara County. HJTA has two concerns: 1) It is a sales tax. 2) It is unconstitutional.

The proposal would "assess" wineries a percentage of gross sales revenue, currently all items sold in tasting rooms. (See Board Agenda, August 18, 2020, p. 3.) The Vintners Association asks the County to be the lead government agency. (*Ibid.*) HJTA cautions the County against accepting this role. Any "sales-based assessment" is a sales tax, which the Department of Tax and Fee Administration must oversee, and the voters must approve.

The Board Agenda admits it is a sales tax:

Any assessment based upon sales presents challenges as unlike TOT *the County government does not have a role in the collection of sales taxes.* That is a function of the State. The collection of *sales-based assessments* requires a new assessment collection process to be designed and implemented. Additionally, other collection related processes will be needed to address the remittance of collected assessments to the Vintners Association and to ensure business owners are complying with assessment requirements including the correct calculation of assessment amounts and timely payment. A third party will need to be contracted by either the County or the Vintners Association to administer the collection of these assessments as *there are no existing tax collection processes within County Offices that can be leveraged* nor is there any capacity to create new processes. The cost of the third party will need to be funded by the BID assessments.

(*Id.* at p. 5, emphasis added.)

The new system the Vintners Association seeks is obviously a sales tax collection system. It wishes the County government had a sales tax collection system it could use, recognizes that none exists because sales tax collection is a State function, and then asks the County to intrude into State territory to create a new County-run system to collect its proposed Wine BID sales tax.

The fact that the weighting of the assessment ballots here cannot be done precisely is another indication that the proposed “assessment” is a sales tax. Assessments under the Property and Business Improvement District Act of 1994 follow the same assessment procedures as those under Proposition 218. (See Str. & Highways Code, §36714; Gov. Code, § 53753.) Since ballots must be weighted according to financial obligation, the Vintners Association admits this will be a problem. (See Board Agenda, August 18, 2020, p. 5.) It even proposes using sales tax data to calculate the “assessment”: “The Vintners Association’s consultant Civitas will need access to sales tax data to estimate the amount of the proposed assessment. They have requested information from the County’s sales tax consultant, HdL Company.” (*Id.* at p. 4.)

Not only is the ‘sales-based assessment’ an improper attempt to levy a State-preempted sales tax, but it would also require two-thirds voter approval (not just majority winery approval) under Proposition 26 for failing to meet the requirements of an exception to a tax. (Cal. Const., art. XIII C, § 1(e)).

Proposition 26 defines all government charges as a tax unless they meet one of seven listed exceptions. Assessments are usually excepted if “imposed in accordance with the provisions of Article XIII D.” (Cal. Const., art. XIII C, § 1(e)(7).) But this is not an assessment benefitting real property per Article XIII D, section 4. Article XIII D “applies only to levies ‘upon real property.’” It does not apply to assessments on businesses, like the one proposed here. (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (1999) 72 Cal.App.4th 230, 236.)

Accordingly, the Wine BID, relying on the Property and Business Improvement District Act of 1994 (Str. & Highways Code, § 36600 et. seq.) purports to rely on Proposition 26’s first exception to a tax for a “charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege” or the second exception for a “specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” (Cal. Const., art. XIII C, § 1(e)(1-2).) It further purports to rely on Government Code section 53758, which defines a government service to include “maintenance, landscaping, marketing, events, and promotions.”

There are several problems with the stated justifications of the Wine BID under Proposition 26. The Wine BID declares its specific benefit is increased sales. But there is no way to be sure that every winery is seeing increased sales worth the same or more than their payments, nor to know which, or if any, increased sales are attributable to the charges. Word often spreads when a wine is desirable. Santa Barbara County is well-known for excellent wine. Lastly, benefits are not direct to the payer. In fact, the benefits, if any, are likely to inure only to the larger wineries. They could also inure heavily instead to the sales that are *not* being assessed, such as the bulk sales to out-of-county retailers.

Further, the last paragraph of Proposition 26 makes clear that the aggregate cost inquiry and the allocation inquiry (the charge to each payer) are distinct. (See *City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191, 1212.) This means the “assessment” will be invalid as to any payer who does not receive a benefit or service equal to or greater than what he is charged.

The Wine BID also declares that marketing and promotions are specific government services exempting it from qualifying as taxation. The government service exception is subject to the same analysis as a specific benefit. Further, Government Code section 53758 is a legislative interpretation of Proposition 26. Because the judiciary interprets the Constitution, there is no guarantee that the Legislature’s interpretation will stand up in court.

Such a case would be one of first impression. To our knowledge, there have been only two similar cases challenging tourism marketing district assessments on hotel charges under Proposition 26, but neither were decided on the merits. In one case, standing became moot when the City of San Diego eliminated the smaller hotels from the assessment. “The City believed the 2016 amendment was more compliant with Proposition 26 because [a]rguably, only the larger hotels receive a direct benefit from the marketing expenditures such that only the larger hotels should be assessed.” (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 352, citing *San Diegans for Open Government v. City of San Diego* (Super. Ct. San Diego County, 2017, No. 37-2012-00088065-CU-MC-CTL).) Similarly here, the smaller wineries might pay into the system, while only the larger wineries see any benefit of overall marketing and promotions.

Thank you for taking time to consider these concerns. HJTA recommends the County not accept any role in the Vintners Association’s proposed WineBID and we hope to hear back from you with your thoughts.

Sincerely,

Laura Dougherty

Laura Dougherty
Senior Staff Attorney

CC: Department of Tax and Fee Administration, Sales Tax Division