



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO
Department No.: 012
For Agenda Of: 08/18/2020
Placement: Departmental
Estimated Time: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Select_Board(s)
FROM: Department Mona Miyasato, County Executive Officer
Director(s)
Contact Info: Ed Price, Assistant Auditor-Controller

SUBJECT: Proposed Wine Business Improvement District

County Counsel Concurrence

As to form: Yes

Other Concurrence:

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

It is recommended that the Board of Supervisors:

- a) Receive an informational report on a proposed Wine Business Improvement District (“Santa Barbara County Wine Preserve”) being developed by the Santa Barbara Vintners Association;
- b) Provide any direction, as appropriate; and
- c) Find that the proposed actions to do not constitute a “Project” within the meaning of the California Environmental Quality Act, pursuant to 14 CCR 15378(b)(4), as it consists of the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment.

Summary Text: This item is on the agenda 1) to allow the Santa Barbara Vintners Association to introduce their proposed wine Business Improvement District (BID); 2) to provide your Board with basic information on BIDs, and; 3) to solicit any direction your Board may want to provide on the proposed wine BID. Approval of the BID by the Board would occur after a petition to form the district by those businesses assessed is generated and submitted. The Santa Barbara Vintners believes this will occur sometime this fall.

For two years, the Santa Barbara Vintners Association has been developing a proposed wine Business Improvement District (BID), called the Santa Barbara County Wine Preserve, to include all wine tasting facilities located within the boundaries of the Santa Barbara County wine region, including the

unincorporated areas of the County and all cities in the county. The Vintners Association will participate in the 8/18/2020 Board meeting to explain their proposed wine BID. The Auditor-Controller's office role is limited to providing staff support at the request of the CEO and Supervisor Hartmann's office. The proposed BID would be the first BID in which the County is the lead government agency and will be one of the first BIDs in the state to promote wine sales.

Background: The County has approved resolutions of consent for two business improvement districts in the unincorporated county: the Santa Ynez Valley Tourism BID (City of Solvang serves as lead) and Santa Barbara South Coast Tourism Business Improvement District (City of Santa Barbara serves as lead). These districts fund tourism-related promotional activity.

Discussion:

Brief Overview on Business Improvement Districts in General:

BIDs allow business owners to organize their efforts to increase demand for sales through collaborative brand development and promotional efforts. Business owners within the district fund services such as marketing and business promotion that provide specific benefits to businesses paying the assessment. A new business improvement district can be approved for only five years initially but can be renewed for longer terms.

Only a county or a city can form a business improvement district and levy an assessment, pursuant to Property and Business Improvement District Law of 1994 ("94 Act") (Streets and Highways Code Section 36600 et seq.). A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city, and vice versa. A district cannot be approved if protests received from businesses in the proposed district exceed 50 percent of the total assessment to be levied.

The nonprofit entity, commonly referred to the "owners' association", initiating a BID's formation sets the methodology for determining assessment amounts, considering each business's type, size, and location, along with the activities and improvements to be funded. This document is known as the Management District Plan (MDP). Business within a BID pay an assessment as determined by the MDP.

The sponsoring government then enters into a contract with the owners' association associated with the BID for the management and administration of BID activities. A primary advantage of BIDs, as opposed to voluntary merchant associations, is that a BID permits the costs of activities and physical improvements to be spread equitably across all those who benefit.

Because the owners' association is usually comprised of the businesses who are being assessed, members sometimes may see BID assessment proceeds as "their money" rather than "public money." However, BID assessments are not dues voluntarily paid by members to the owners' association. Assessments are a mandatory levy that must be paid by all assessed, regardless of whether the business owner supported the assessment or activities of the BID.

Assessment revenues can only be used by the owner's association for expenditures eligible under law and in conformance with the BID's MDP. An Annual Report is submitted to the sponsoring government to provide oversight into the owners' associations management of the District funds. The Annual Report

is forward looking and allows the Board of Supervisors the ability to provide input, within the framework of the MDP, to the owners' associations on the management of the District. The 94 Act requires the owners' associations to comply with the Ralph M. Brown Act and the California Public Records Act to provide transparency. Additional oversight typically required by sponsoring governments includes required annual audited financial statements and compliance reports prepared by an independent CPA.

It is possible that despite efforts of owners' association officers and management staff to encourage stakeholder participation, owners' associations (especially those associated with small BIDs) may become dominated by a relatively small number of stakeholders who actively attend meetings and volunteer their time to work on association management or projects. There may be a tendency for stakeholders who are not part of this dominant group to seek help from the sponsoring government in solving perceived "leadership" problems with the association.

While governing code sets forth the minimum requirements to form a BID (for example, minimum of 50% + 1), your Board may create additional steps to be satisfied before forming the BID. One reason for imposing additional requirements can be to gauge stakeholder interest before developing the BID program. Likewise, with respect to oversight requirements, your Board may also stipulate additional reporting or other processes as deemed appropriate. Your Board can also require that the MDP contain certain provisions such as the prohibition of the use of assessment revenue for advocacy activities related to Board policies. Finally, your Board also has the option to not establish a BID, even if the BID has survived petition, ballot proceeding or protest hurdles.

The Proposed Business Improvement District:

In summary, the Santa Barbara Vintners Association reports:

- The Santa Barbara Vintners Association expects to raise \$1.0-\$1.2 M annually based on an annual assessment of 1.5% of On-site Direct-to-Consumer (DTC) sales. This would include all items (wine, tasting fees, food or merchandise, etc.) sold in wine tasting rooms but does not include any wine club shipments/pickups, event tickets, purchases made through the internet, phone and any wine sold through wholesale channels.
- All vintners in the county that have on-site direct-to-consumer business (wine tasting rooms) are eligible to sign the petition in favor of the Wine BID. Votes are weighted based on the percentage of the self-reported on-site DTC business a brand represents of the county's total. Businesses paying assessments that constitute more than 50% of the total assessments proposed to be levied must be in favor of formation in order for the BID to move to the County Board of Supervisors for approval.
- The Vintners Association proposes that the County be the lead government agency, and for the Board of Supervisors to designate the Santa Barbara Vintners as the Owners' Association of the Wine BID. If approved, a third party would be responsible for collecting the assessments and remitting them to the Owners Association.

As this effort draws closer for required Board action, and public information sessions have occurred, this report is to provide awareness of this initiative and the County's proposed involvement.

To implement the any business improvement district, several actions are required. Below is the tentative list of actions:

Required Actions	Schedule
1) Map and description of district is developed, along with district management plan.	In progress by Santa Barbara Vintners Association.
2) Vintners Association’s consultant finalizes list of assessed wineries from County data, working with Auditor-Controller’s Office using information from sales tax records.	In progress. Non-disclosure agreements and resolution required by County.
3) District Management Plan is finalized and circulated	TBD
4) Petition to form the district by those businesses assessed is generated and petition drive conducted by the Vintners Association	TBD To be submitted by the Vintners Association to the Board of Supervisors.
5) Public Hearing – Petition in support is submitted to the Board of Supervisors. At the hearing, there is an opportunity for protest votes by businesses in the district (district cannot be approved if protests received from businesses in the proposed district exceed 50 percent of the total assessment to be levied).	TBD – Board of Supervisors hearing
6) Resolution of intent to form the district (and agreeing to be lead agency) Resolution requesting consent by affected cities	TBD – Board of Supervisors following hearing
7) Resolution of consent by cities	TBD – City council meetings
8) Collection of assessment and remittance to Vintners Association	TBD – Third party or public agency entity

Information and FAQs on the proposed Santa Barbara Wine Preserve BID can be found at this website <https://www.sbcountywines.com/winebidinfo.html>.

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. A non-disclosure agreement (NDA) is required to ensure confidentiality of the information provided.

Currently, the Vintners propose using a third-party collector as there are no existing tax collection processes within County Offices that can be leveraged. If your Board desires the County to be responsible for collecting the assessments, this would need to be addressed prior to finalization of the district management plan.

Challenges

In other BIDs in Santa Barbara County, the assessment is on hotel occupancy. Because the County Treasurer-Tax Collector collects transient occupancy tax (TOT) for the County already, collection of the assessment for the South Coast and Santa Ynez BIDs is relatively straightforward and easy to verify.

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.

Using On-Site Direct-to-Consumer sales as the basis for the assessment presents additional significant challenges on two levels. While On-Site Direct-to-Consumer sales are included in the sales activity reported to the State they are not specifically identified as such in sales tax filings. This means that the collection process will not be able to leverage sales reported to the State as a tool to simplify assessment reporting and verification. Most likely the calculation of the assessment would be based upon data self-reported by wineries which will require more efforts to verify businesses are accurately reporting and correctly paying their assessments.

Second, another challenging aspect of using the On-Site Direct-to-Consumer sales is the calculation of petition/protest “weighted votes.” As the basis will need to be self-reported those businesses not responding accurately or declining to provide any data may skew weighting of votes. Accordingly, a defensible methodology such as the application of a derived ratio of On-Site Direct-to-Consumer sales to gross sales (which can be verified from State data), will need to be developed.

While methods and processes may be developed to address the significant challenges of using On-Site Direct-to-Consumer sales as the assessment basis, the complexity required and associated costs to ensure the fair weighting of votes and the compliance by assessment payers may not be practical or feasible. Accordingly, a change in the proposed basis is likely necessary.

Upon direction by your Board to move forward on this item, we will continue to work with the Vintner’s Association as they finalize their MDP to address these and any other concerns that your Board may have.

Fiscal and Facilities Impacts:

Budgeted: No

County costs of forming the Wine BID would relate to any staff time and mailing of the hearing notice to the businesses to be assessed. The County will also incur ongoing administrative costs associated with the BID. These costs would include costs of annual filings with the BOS and other oversight activities. Should the County be the one contracting with the third party for assessment collections the cost of that contract would also be incurred. The County may require the reimbursement of costs (both formation and ongoing) be paid from the BID assessments.

Special Instructions:

Page 6 of 6

None.

Attachments:

Attachment A: Santa Barbara Vintners Association Wine BID presentation

Authored by:

Ed Price