



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: February 12, 2018

Approved

D. D. S. y. L.

Date

2/23/18

**SUBJECT: ADOPTION OF RESOLUTION OF INTENTION TO ESTABLISH THE
SAN JOSE HOTEL BUSINESS IMPROVEMENT DISTRICT**

RECOMMENDATION

1. Accept staff's report and consider preliminary actions required to establish a new business owner initiated Hotel Business Improvement District within the City of San José pursuant to Streets & Highways Code Section 36600 et seq.
2. Adopt a resolution:
 - a. Stating its intention to form the San José Hotel Business Improvement District ("SJHBID") within the City of San José;
 - b. Preliminarily approving the SJHBID Management District Plan; and
 - c. Setting a public meeting to be held on March 20, 2018 at 1:30 p.m. and a public hearing on April 24, 2018 at 1:30 p.m.
3. Adopt a resolution finding that San José Hotels, Inc. will serve as the Owners' Association for the SJHBID to implement the program described in the Management District Plan and authorizing the City Manager to negotiate and execute an agreement with San José Hotels, Inc. to provide those services, contingent upon the establishment of the SJHBID.

OUTCOME

The SJHBID, if approved, would result in the assessment of lodging businesses with eighty (80) rooms or more within the boundaries of the City of San José to help fund marketing and sales promotion efforts.

BACKGROUND

The existing SJHBID was formed in 2006 pursuant to Streets and Highways Code Section 36500 et seq, commonly referred to as the Property and Business Improvement Area Law of 1989 ('89 Law). This law provides that the SJHBID is renewed annually. The annual approval subjects the district to possible legal challenge every year. In addition the short term only allows the district to plan in one-year increments. As a result of this uncertainty, Team San Jose (TSJ) believes it is hampered in its efforts to implement long-range and larger-scale marketing and visitor attraction programs. For this reason, the hotels and TSJ propose to modernize the SJHBID by disestablishing the '89 Law SJHBID and re-establishing the SJHBID pursuant to Streets and Highways Code Section 36600 et seq otherwise known as the Property and Business Improvement District Law of 1994 ('94 Law).

The 1994 Law is now more commonly used to create tourism improvement districts. Many districts that were formed under the 1989 Law have undergone a conversion to the 1994 Law. Recent examples of Tourism Business Improvement District conversions include Sacramento, Stockton, Fairfield, Huntington Beach, Palm Springs and Yolo County.

The most commonly cited reason for conversion and/or use of the 1994 Law versus the 1989 Law is a measure of certainty created by the 1994 Law. The 1994 Law requires preparation of a Management District Plan (Plan) outlining key details, such as budget and programs, and written petition support of the Plan from businesses that will pay more than 50% of the assessment. This process helps ensure that those who pay have a say in the programs they are funding, and that those programs are designed to meet their needs.

In addition, the 1994 Law designates a nonprofit corporation to serve as "Owners' Association" and implement programs outlined in the Management District Plan. The law requires that nonprofit Owners' Association to follow both the Brown Act and Public Records Act, providing transparency in decision making and fund management. San Jose Hotels Inc. (SJHI) will serve as the Owners' Association for the SJHBID.

Under the 1994 Law, the San Jose Hotels Inc. will submit an annual report to the City. Because the District is proposed to be formed and the assessment levied for five years, the annual report will provide detail on the upcoming years' budget and programming, but will not require assessments be levied each year by Council. If approved, the assessments are levied automatically for the five (5) year term.

The SJHBID is a benefit assessment district proposed to help fund marketing and sales promotion efforts for San José lodging businesses with eighty (80) rooms or more. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive additional room nights. The proposed SJHBID under the '94 Law includes all lodging businesses, with eighty (80) rooms or more, located within the boundaries of the City of San José.

Hoteliers decided to pursue formation of the new SJHBID under the '94 Law in order to modernize an existing revenue source devoted to marketing San José as a tourist, meeting and event destination. If established, it is anticipated that the new SJHBID would generate an estimated \$3,456,932 on an annual basis for promotion of travel and tourism specific to San José.

ANALYSIS

HOTEL BUSINESS IMPROVEMENT DISTRICTS

In general, a Hotel Business Improvement District ("HBID") utilizes the efficiencies of private sector operation in the market-based promotion of tourism. These special assessment districts allow lodging and tourism-related business owners to organize their efforts to increase tourism. Tourism-related business owners within the district fund the HBID, and those funds are used to provide services that the businesses desire and that benefit the assessed lodging businesses within the HBID.

HBID benefits:

- Funds cannot be diverted for other government programs
- They are customized to fit the needs of each destination
- They allow for a wide range of services; including: Marketing of the Destination, Tourism Promotion Activities and Sales Lead Generation
- They are designed, created and governed by those who will pay the assessment
- They provide a stable funding source for tourism promotion

In California, Hotel or Tourism Business Improvement Districts are primarily formed pursuant to the '94 Law. This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area.

In recent years, many '89 Law HBIDs have converted to the '94 Law. A partial list is below:

- Stockton (2010)
- Sacramento (2012)
- Fairfield (2013)
- West Hollywood (2013)
- Huntington Beach (2014)
- Lodi (2015)
- Richmond (2015)
- Palm Springs (2016)
- Yolo County (2017)

MANAGEMENT DISTRICT PLAN

The Management District Plan (Attachment 1) includes the proposed boundary of the new SJHBID, a service plan and budget and a proposed means of governance. The SJHBID will include all lodging businesses, with eighty (80) rooms or more, existing and in the future, available for public occupancy within the boundaries of the City of San José. The boundaries for the proposed zones/assessments are based on proximity to the airport, convention center and all else falls in the City limits.

The proposed SJHBID will have a five-year life. The assessment will be implemented beginning July 1, 2018. Once per year beginning on the anniversary of SJHBID formation there is a thirty (30)-day period in which business owners paying fifty percent (50%) or more of the assessment may protest and begin proceedings to terminate the SJHBID.

If the proposed SJHBID is established, the City will be responsible for collecting the assessment on a monthly basis from each lodging business located in the SJHBID boundaries at the same time and in the same manner as the City's transient occupancy tax ("TOT"). Upon establishment of the new SJHBID, the City anticipates entering into an agreement with San Jose Hotels Inc., for the operation and administration of the SJHBID. San Jose Hotels Inc., will perform services similar to those it performs currently under the existing agreement with the City in connection with the operation and administration of the existing HBID established under the '89 Law. The City will continue to forward the assessments to San Jose Hotels Inc., which will have the responsibility of managing SJHBID programs as provided in the Management District Plan. The City will be paid a fee equal to one percent (1%) of the amount of assessments collected to cover its costs of collection and administration.

DISTRICT FORMATION PROCESS AND KEY DATES

March 6, 2018 RESOLUTION OF INTENTION

Upon the submission of a written petition, signed by the business owners in the proposed district who will pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district.

Petition Status: Petitions in favor of district formation were submitted by 17 hotels, which represent 55.63% of the total SJHBID assessment. This majority petition allows the Council to initiate proceedings for district formation at the March 6, 2018 meeting.

March 7, 2018 NOTICE The '94 Law requires the City mail written notice of both the public meeting and public hearing discussed below (joint notice) to the owners of all businesses proposed to be within the SJHBID. Mailing the joint notice begins a mandatory forty-five (45) day period during which owners may protest SJHBID formation. The written notice must include the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business,

separately stating the amount of any proposed assessment increase, a description of the what the assessments will fund, the time and location of the public meeting and hearing, and information on protesting the assessment.

PUBLIC MEETING AND HEARING

Before adopting the resolution establishing the new SJHBID, the City Council is required to conduct at least one public meeting at which the City Council allows public testimony regarding the SJHBID in addition to the public hearing at which the City Council proposes to establish the new business improvement district. The public meeting shall take place no earlier than ten (10) days after the joint notice is mailed. The public hearing shall take place at least forty-five (45) days after the joint notice is mailed and no earlier than seven (7) days after the public meeting.

March 20, 2018 PUBLIC MEETING

Allow public testimony on the establishment of the SJHBID and levy of assessments. No City Council action is required at this meeting.

April 24, 2018 FINAL PUBLIC HEARING

If written protests are received from the owners of businesses in the proposed SJHBID which will pay more than fifty percent (50%) of the assessments proposed to be levied, and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed assessment against such businesses shall be taken for a period of one (1) year from the date of the finding of a majority protest by the Council.

At the conclusion of the public hearing to establish the SJHBID, 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 assessments.

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

SJHBID Financial Commitments and Services

The attached Management District Plan, prepared by San José Hotels, Inc.'s consultant, outlines the enhanced services, the approximate costs of those services, and the anticipated funding sources (e.g. assessments). The Management District Plan has a proposed initial budget of \$3,456,932. The proposed services and allocations have not significantly changed from previous years. The table below outlines the services and annual funding levels:

Fiscal Year	Sales & Marketing	Administration & Operations	Contingency / Reserve	City Administration Fee	Total
2018-19	\$3,223,589.32	\$172,846.61	\$25,926.99	\$34,569.32	\$3,456,932.25
2019-20	\$3,223,589.32	\$172,846.61	\$25,926.99	\$34,569.32	\$3,456,932.25
2020-21	\$3,223,589.32	\$172,846.61	\$25,926.99	\$34,569.32	\$3,456,932.25
2021-22	\$3,223,589.32	\$172,846.61	\$25,926.99	\$34,569.32	\$3,456,932.25
2022-23	\$3,223,589.32	\$172,846.61	\$25,926.99	\$34,569.32	\$3,456,932.25
Total	\$16,117,946.62	\$864,233.06	\$129,634.96	\$172,846.61	\$17,284,661.25

SJHBID Boundaries and Zones of Service

The map outlining the proposed SJHBID area and three (3) zones of benefit is included in the Management District Plan. The proposed SJHBID will include all lodging businesses with eighty (80) rooms or more, existing and in the future, available for public occupancy within the boundaries of the City of San José. The boundaries are based on proximity to the Norman Y. Mineta San José International Airport, the San José McEnery Convention Center and all else falls in the City limits. The assessment rates have stayed the same as the original district. The table below provides the assessment rates for each benefit zone:

Zone	Initial Assessment Rate	Maximum Assessment Rate
A: Within one (1) mile of the San Jose McEnery Convention Center	\$2.50	\$3.00
B: Within one and one-half (1.5) miles of the San Jose International Airport	\$1.25	\$1.75
C: Over one (1) mile from the San Jose McEnery Convention Center and over one and one-half (1.5) miles from the San Jose International Airport	\$1.00	\$1.50

Term of SJHBID/Governing Board/Relationship with San José Hotels, Inc.

Under the '94 Law, the proposed SJHBID will have an initial term of five (5) years, after which the SJHBID sunsets or needs to be renewed in order to continue. The proposed SJHBID will have its own governing board which is the board of directors of the Owner's Association (the "Board") as defined under the '94 Law. The Owner's Association is typically a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. It is anticipated that San Jose Hotels, Inc., will act as the Owner's Association for the new SJHBID, if approved by the City Council. The Board will determine SJHBID budgets, assessment rates and monitor service delivery as set

forth in the Management District Plan. While the Owners' Association is a private entity it is nevertheless subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act.

EVALUATION AND FOLLOW-UP

The existing SJHBID will be terminated or disestablished if the new SJHBID is approved. Staff will bring forward for council's consideration and approval the necessary documents required for the disestablishment of the current SJHBID, including the resolution of intention to disestablish, an ordinance repealing the existing ordinance establishing the current SJHBID under the '89 Law, and a resolution setting the date and time for the public hearing on the proposed disestablishment of the current SJHBID.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the March 6, 2018 Council agenda.

Staff reached out to hotels regarding the changes in zone structure in a variety of manners. Individual meetings with general managers of several affected properties were also accompanied by discussions within HBID meetings and distribution of the District Management Plan and email correspondence to any questions arising.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Finance Department, the City Manager's Budget Office, the City Clerk's Office, Team San Jose, and the San José Hotel Business Improvement District.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

This action is consistent with the Economic Development Strategy approved by Council, specifically Initiative No. 1, "Encourage Companies and Sectors that Can Drive the San José/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure."

HONORABLE MAYOR AND CITY COUNCIL

February 12, 2018

Subject: Adoption of Resolution of Intention to Establish the San Jose Hotel Business Improvement District
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COST SUMMARY/IMPLICATIONS

Establishment of the new SJHBID will not immediately impact City revenue. However, the City will receive a fee of one percent (1%) of the assessments collected to cover its costs of collecting the assessments from the hotels, which is slightly more than what the City currently receives under the existing agreement with San Jose Hotels, Inc. Because the SJHBID programs are intended to increase tourism in the City, there may be an increase in transient occupancy tax and sales tax collections. However, since the rates and boundaries of the proposed SJHBID under the '94 Law are substantially the same as the existing SJHBID, it is unclear at this time what, if any, increase in transient occupancy tax or sales tax collections might occur. In addition, the SJHBID assessments are restricted for use exclusively by the SJHBID. This recommended action is consistent with the Economic Recovery Strategy of Council approved Budget Strategy.

CEQA

Exempt, File No. PP08-048.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions please contact Sal Alvarez, Executive Analyst in the Office of Economic Development, at (408) 793-6943.

Attachment