

FORM APPROVED COUNTY COUNSEL
 BY: *Kausika K. Kelly* 8/16/16
 DATE
 MARSHAL VICTOR

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

539



FROM: Economic Development Agency

SUBMITTAL DATE:
 September 13, 2016

SUBJECT: Public Hearing and Resolution No. 2016-190 Forming the Temecula Wine Country Tourism Marketing District and Levying an Assessment for Fiscal Year 2016-2017, District 3, [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Resolution No. 2016-190 Forming the Temecula Wine Country Tourism Marketing District (TWCTMD) and Levying an Assessment for Fiscal Year 2016-2017;
2. Hold the public hearing and at the conclusion of the public hearing, should a majority protest not exist, approve the proposed annual assessment levy for Fiscal Year 2016-2017.

BACKGROUND:

Summary

(Commences on Page 2)

Departmental Concurrence

Robert Field

Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: N/A
 Budget Adjustment: No
 For Fiscal Year: 2016/17

C.E.O. RECOMMENDATION:

APPROVE

BY: *Rohini Dasika*
 Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: _____ District: 3 Agenda Number: _____

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Public Hearing and Resolution No. 2016-190 Forming the Temecula Wine Country Tourism

Marketing District and Levying an Assessment for Fiscal year 2016-2017, District3, [\$0]

DATE: September 13, 2016

PAGE: 2 of 3

BACKGROUND:

Summary

In November, 2015, Visit Temecula Valley requested that the County form the Temecula Wine Country Tourism Marketing District.

The Temecula Wine Country Tourism Marketing District (TWCTMD) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Temecula Wine Country lodging businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive additional room nights. The proposed district includes all lodging businesses located within the boundaries of the Temecula Valley region of the County of Riverside.

Hoteliers decided to pursue formation of the district in order to create a revenue source devoted to marketing Temecula Wine Country as a tourist, meeting and event destination. If established, the District would generate approximately \$188,500 on an annual basis for promotion of travel and tourism specific to Temecula Wine Country.

TOURISM MARKETING DISTRICTS

Tourism Marketing Districts utilize 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 district, and those funds are used to provide services that the businesses desire and that benefit the lodging businesses within the district.

District 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, Tourism Business Improvement Districts (TBID) are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. The key difference between TBID's and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.

Resolution No. 2016-190 forms the Temecula Wine Country Tourism Marketing District, adopts, and approves the Temecula Wine Country Tourism Marketing District Management District Plan 2016-2021, as originally filed with the Clerk of the Board. This plan identifies the activities of the Tourism Marketing District, the estimated costs of the activities, and the method and basis of levying the assessment under the Tourism Marketing District.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Public Hearing and Resolution No. 2016-190 Forming the Temecula Wine Country Tourism Marketing District and Levying an Assessment for Fiscal year 2016-2017, District3, [\$0]

DATE: September 13, 2016

PAGE: 3 of 3

BACKGROUND:

Summary (Continued)

The level of assessment being considered for the fiscal year 2016-2017 Tourism Marketing District is 2% of the sale of overnight room stays and will apply to all lodging businesses, existing and in the future, available for public occupancy located within the district. There are approximately 31 lodging businesses within the proposed Tourism Marketing District.

The County Treasurer-Tax Collector's office will begin collecting the Tourism Marketing District assessment effective November 1, 2016. The collection process is done on a quarterly basis.

Impact on Residents and Businesses

Tourism provides employment and contributes to the local tax base of Temecula Valley.

ATTACHMENTS:

- Resolution No.2016-190
- Temecula Wine Country Tourism Marketing District Management District Plan 2016-2021
- Visit Temecula Valley Staff Report

RESOLUTION NO. 2016 - 190

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE DECLARING RESULTS OF MAJORITY PROTEST PROCEEDINGS AND ESTABLISHING THE TEMECULA WINE COUNTRY TOURISM MARKETING DISTRICT

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes the County to establish business improvement districts upon petition by a weighted majority of the lodging business owners located within the boundaries of the district; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the Temecula Wine Country Tourism Marketing District ("TWCTMD") have petitioned the Board of Supervisors to establish the TWCTMD; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that describes the proposed assessment to be levied on lodging businesses within the TWCTMD to pay for sales promotion and marketing activities, and other improvements and activities set forth in the Plan; and

WHEREAS, the assessed lodging businesses within the TWCTMD will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on July 26, 2016 at 9:00 AM at 4080 Lemon Street, 1st Floor Board Chambers, Riverside, CA 92501, the Board of Supervisors adopted a Resolution of Intention, Resolution No. 2016-094; and

WHEREAS, the public meeting and public hearing to consider the establishment of the TWCTMD have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on August 23, 2016 at 9:00 AM at 4080 Lemon Street, 1st Floor Board Chambers, Riverside, CA 92501, the Board of Supervisors held a public meeting regarding the establishment of the TWCTMD, and the Board of Supervisors heard and received objections and protests, if any, to the establishment of the TWCTMD and the levy of the proposed assessment; and

WHEREAS, on September 13, 2016 at 9:00 AM at 4080 Lemon Street, 1st Floor Board Chambers, Riverside, CA 92501, the Board of Supervisors held a public hearing regarding the establishment of the TWCTMD, and the Board of Supervisors heard, received and overruled all objections and protests, if any, to the establishment of the TWCTMD and the levy of the proposed assessment; and

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner
DATE: 8/16/16
DALE A. GARDNER

WHEREAS, the Clerk of the Board has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses in the proposed district which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, the County bears the burden of proving by a preponderance of the evidence that an assessment imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the costs to the County in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS THAT:

1. The recitals set forth herein are adopted by the Board of Supervisors as findings and they are true and correct.
2. The Temecula Wine Country Tourism Marketing District is hereby established for a five (5) year term, beginning November 1, 2016 through October 31, 2021.
3. The Plan dated June 30, 2016 is hereby adopted and approved.
4. The activities to be provided to benefit businesses in the district will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the district; to provide activities or improvements outside the TWCTMD; or for any purpose other than the purposes specified in this Resolution, the Resolution of Intention, and the Plan.
5. The Board of Supervisors find as follows:
 - a) The activities funded by the assessment will provide a specific benefit to assessed businesses within the TWCTMD that is not provided to those not paying the assessment.
 - b) The assessment is 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.
 - c) The assessment is a charge imposed 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.
 - d) Assessments imposed pursuant to the TWCTMD are levied solely upon the assessed business, and the business owner is solely responsible for payment of the

assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the "TWCTMD Assessment."

6. The assessments levied for the TWCTMD shall be applied towards sales, promotions and marketing programs to market Temecula Wine Country lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.

7. Assessments levied on lodging businesses pursuant to this resolution shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on room rentals is the best measure of benefit.

8. The assessments for the entire District will total approximately \$188,500 in year one.

9. Bonds shall not be issued to fund the TWCTMD.

10. The TWCTMD shall include all lodging business located within the boundaries of the the Temecula Valley region of Riverside County. A boundary map is attached hereto and incorporated herein by reference.

11. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the TWCTMD assessment is levied as long as they are used consistent with the requirements set forth herein.

12. The assessments to fund the activities and improvements for the TWCTMD will be collected by the County on a quarterly basis, and in accordance with Streets and Highways Code §36631.

13. The Board of Supervisors, through adoption of this Resolution and the Plan, has the right pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the TWCTMD as defined in Streets and Highways Code §36612. The Board of Supervisors has determined that Visit Temecula Valley shall be the Owners' Association.

14. Visit Temecula Valley, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the district.

15. The TWCTMD established pursuant to this resolution will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

16. The adoption of this resolution shall constitute the levy of the TWCTMD assessment in each fiscal year of the TWCTMD's five (5) year term referred to in the Plan.

17. The Clerk of the Board, or his or her designee, is directed to take all necessary actions to complete the establishment of the TWCTMD and to levy the assessments.

18. This Resolution shall take effect immediately upon its adoption by the Board of Supervisors.

I HEREBY CERTIFY that the foregoing Resolution of Formation was introduced and adopted at a regular meeting of the Board of Supervisors on the _____ day of _____, 2016 by the following vote:

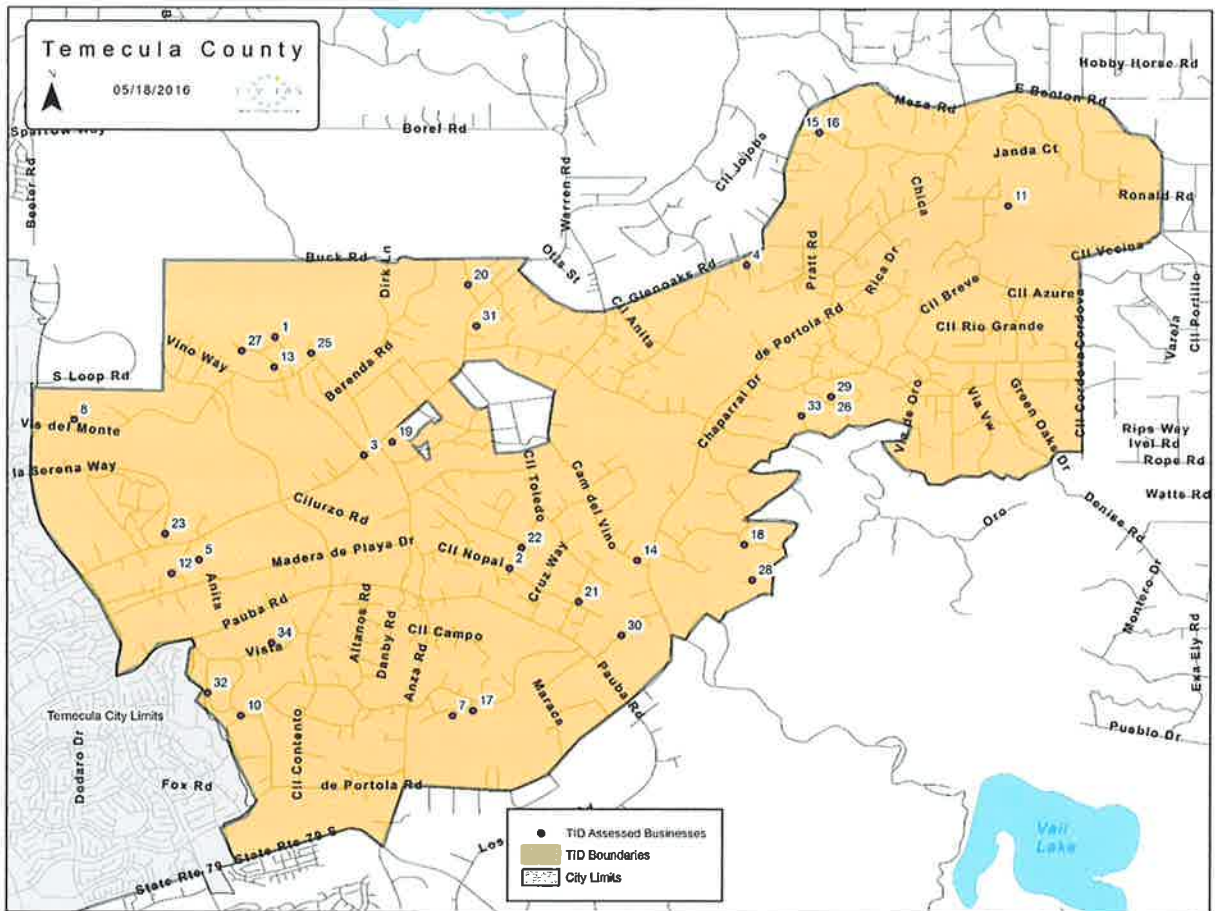
**AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS
ABSTAIN: BOARD MEMBERS:**

Chairman

Attest

Clerk of the Board

Boundary Map



2016-2021



**TEMECULA WINE COUNTRY TOURISM
MARKETING DISTRICT
MANAGEMENT DISTRICT PLAN**

*Prepared pursuant to the Property and Business Improvement District Law of
1994, Streets and Highways Code section 36600 et seq.*

June 30, 2016

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Prepared by
Civitas



(800)999-7781
www.civitasadvisors.com

I. OVERVIEW

Developed by Visit Temecula Valley (VTV), the Temecula Wine Country Tourism Marketing District (TWCTMD) is an assessment district proposed to provide specific benefits to payors, by funding marketing and sales promotion efforts for assessed businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of additional room night sales directly to payors.

Location: The TWCTMD includes all lodging businesses which have not requested to be removed from the district located in the Temecula Valley region of the County of Riverside, as shown on the map and further described in section IV.

Services: The TWCTMD is designed to provide specific benefits directly to payors by increasing room night sales. Marketing and sales promotions will increase overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing room night sales.

Budget: The total TWCTMD annual budget for the initial year of its five (5) year operation is anticipated to be approximately \$188,500. This budget is expected to fluctuate as room sales and the number of assessed businesses do, but is not expected to significantly change over the TWCTMD's term.

Cost: The annual assessment rate is two percent (2%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty; and stays pursuant to contracts executed prior to November 1, 2016.

Collection: The County will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the TWCTMD. The County shall take all reasonable efforts to collect the assessments from each lodging business.

Duration: The TWCTMD will have a five (5)-year life, beginning November 1, 2016 through October 31, 2021. Once per year, beginning on the anniversary of district formation, there is a 30-day period in which owners paying more than fifty percent (50%) of the assessment may protest and initiate a Board of Supervisors hearing on district termination.

Management: Visit Temecula Valley will serve as the TWCTMD's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with the Plan, and must provide annual reports to the Board of Supervisors.

II. IMPETUS

There are several reasons why now is the right time to form a TMD in Temecula Wine Country; the most compelling reasons are as follows:

1. *The Need to Increase Occupancy*

The formation of the TWCTMD is a proactive effort to provide supplemental funding beyond that provided by the County. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the conference segment of the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

2. *An Opportunity for Increasing County Tax Revenues*

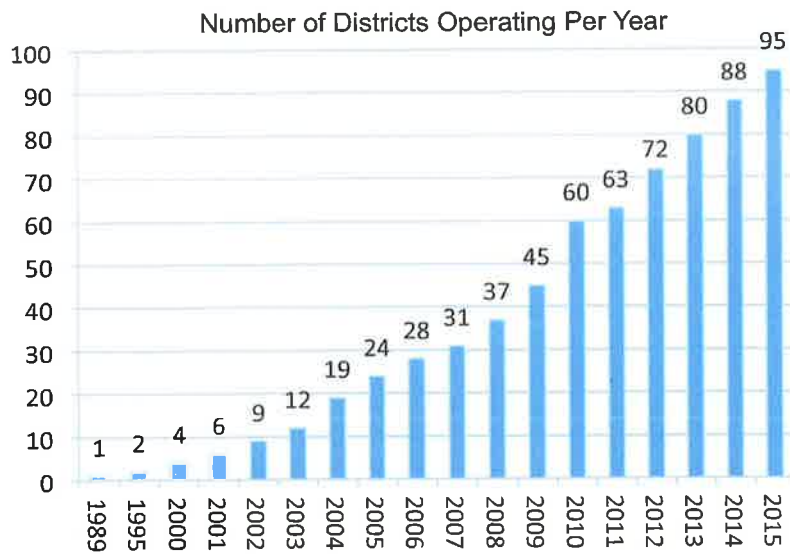
As occupancy rates increase, so too will the County's Transient Occupancy Tax revenue. With stable public/private funding for tourism marketing efforts, annual occupancy rates should increase significantly as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourist spending. This represents a substantial return to the County. The formation of the TWCTMD in partnership with the VTV creates a stable funding source tied directly to tourism promotion.

3. *Stable Funding for Tourism Promotion*

The TWCTMD will provide a stable source of funding for consistent tourism promotion efforts. The TWCTMD will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.

III. BACKGROUND

TMDs are an evolution of the traditional Business Improvement District. The first TMD was formed in West Hollywood, California in 1989. Since then, nearly ninety California destinations have followed suit. In recent years, other states have begun adopting the California model – Washington, Montana, and Texas have adopted TMD laws. Several other states are in the process of adopting their own legislation. And, some cities, like Portland, Oregon, have utilized their charter powers to create TMDs without a state law.



California’s TMDs collectively raise over \$190 million for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Temecula Wine Country lodging businesses invest in stable, lodging-specific marketing programs.

TMDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TMDs allow lodging business owners to organize their efforts to increase room night sales. Lodging business owners within the TMD pay an assessment and those funds are used to provide services that increase room night sales.

In California, TMDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TMDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TMDs:

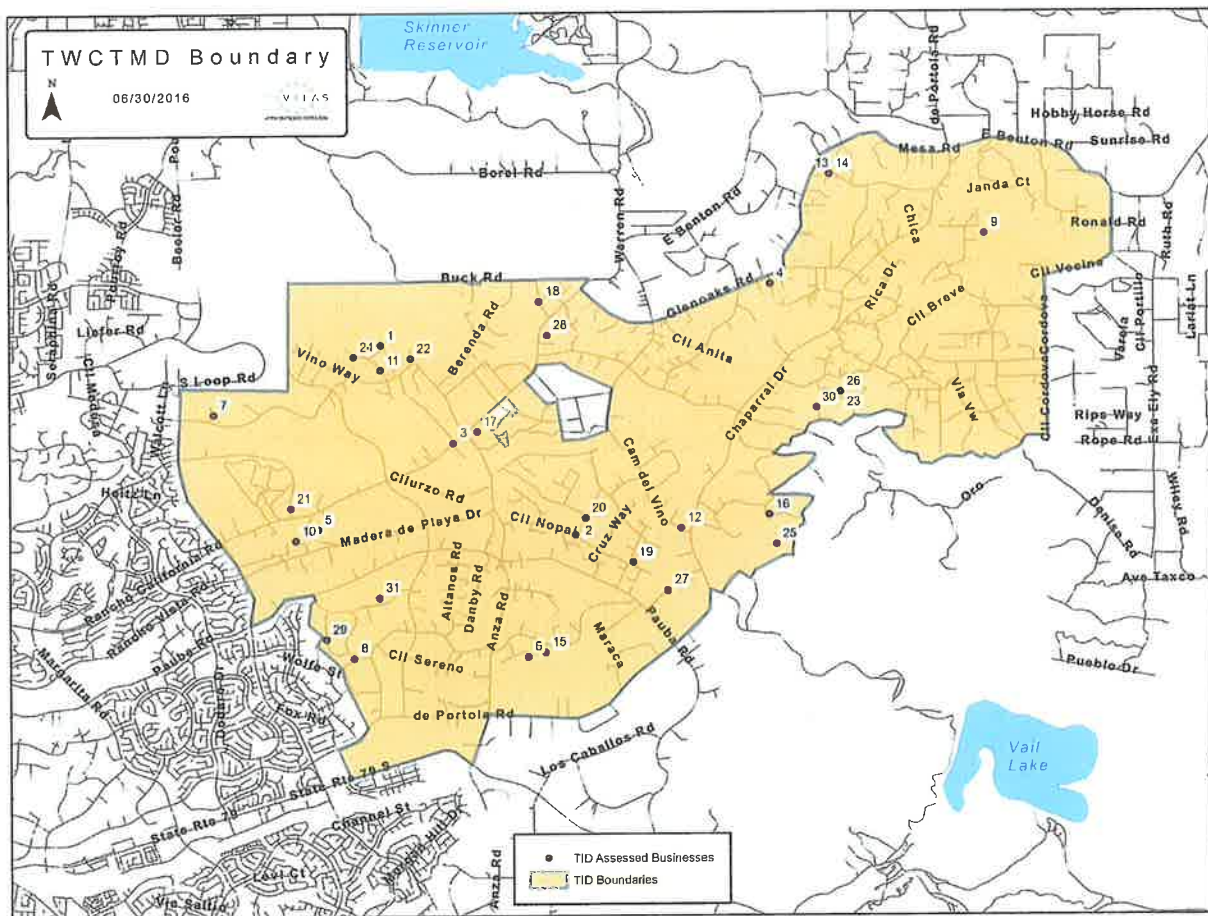
- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are *designed, created and governed by those who will pay* the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

IV. BOUNDARY

The TWCTMD will include all lodging businesses, existing and in the future, available for public occupancy located in the Temecula Valley region of the County of Riverside, which have not requested to be removed from the District.

Once per year, assessed businesses shall have a thirty-day period of opportunity to request to be removed from the District. The first such period shall begin upon adoption of the resolution forming the district. Subsequent periods shall begin on the anniversary of the adoption of the resolution of formation. A new business, upon issuance of a certificate of occupancy or registration with the County Treasurer, shall have thirty days to request to be removed from the District. Requests to be removed must be submitted to the County in writing, identify the business to be removed, and be signed by an authorized representative of the business. At the same time, a business which has previously requested to be removed from the District may submit a request to be included. After each annual thirty-day opt out period, the County shall provide to VTV a current listing of all assessed businesses in the TWCTMD.

The boundary, as shown in the map below, currently includes thirty-one (31) lodging businesses. A complete listing of lodging businesses within the proposed TWCTMD can be found in Appendix 2.

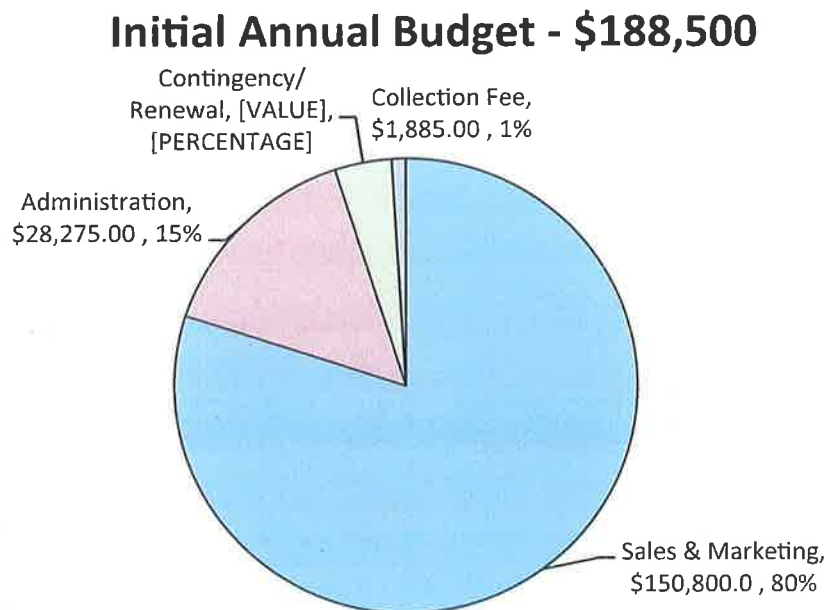


V. BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the County of conferring the benefits or granting the privileges. The privileges and services provided with the TWCTMD funds are sales and marketing programs available only to assessed businesses. Non-assessed businesses, including businesses which have requested not to be included in the District, will not receive sales and marketing programs.

A service plan budget has been developed to deliver services that benefit the assessed businesses. A detailed annual budget will be developed and approved by VTV. The table below illustrates the initial annual budget allocations. The total initial budget is \$188,500.



Although actual revenues will fluctuate due to market conditions and the number of assessed businesses, the proportional allocations of the budget shall remain the same. However, the County and the VTV board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the TWCTMD, any and all assessment funds may be used for the costs of defending the TWCTMD. In the first year of operation, the costs of creating the TWCTMD will be repaid by deducting repayment funds proportionally from budget categories. Repayment costs shall not exceed \$40,000.

Each budget category includes all costs related to providing that service, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the sales and marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the services below will be determined by the VTV on an as-needed basis.

Sales and Marketing

A sales and marketing program will promote assessed businesses as tourist, meeting, and event destinations. The sales and marketing program will have a central theme of promoting Temecula Wine Country as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed businesses;
- Print ads in magazines and newspapers targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Television ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Attendance of trade shows to promote assessed businesses;
- Sales blitzes for assessed businesses;
- Familiarization tours of assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract tourists and group events to assessed businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed businesses;
- Education of hospitality staff on service and safety (related to alcohol and food) designed to create a visitor experience that will bring repeat visits to assessed businesses; and
- Education of lodging business management and the owners' association on marketing strategies best suited to meet assessed business's needs.

Administration and Operations

The administration and operations portion of the budget shall be utilized for administrative staffing costs, office costs, and other general administrative costs such as insurance, legal, and accounting fees.

County Administration Fee

The County of Riverside Treasurer-Tax Collector shall be paid a fee equal to one percent (1%) of the amount of assessment collected to cover its costs of collection and administration.

Contingency/Renewal

A prudent portion of the budget will be allocated to a contingency fund, to account for lower than anticipated collections or higher than anticipated program costs. If there are contingency funds collected and near the expiration of the district there are contingency funds remaining, and business owners wish to renew the district, the contingency funds may be used for renewal costs.

B. Annual Budget

The total five (5) year improvement and service plan budget is projected at approximately \$188,500 annually, or \$942,500 through 2021. This amount may fluctuate as sales and revenue increase at assessed businesses, but is not expected to change significantly over the term.

C. California Constitutional Compliance

The TWCTMD assessment is not a property-based assessment subject to the requirements of Proposition 218. The Court has found, "Proposition 218 limited the term 'assessments' to levies on real property."¹ Rather, the TWCTMD assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the TWCTMD, a "specific benefit" and a "specific government service." Both require that the costs of benefits or services do not exceed the reasonable costs to the County of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, "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."² The services in this Management District Plan are designed to provide targeted benefits directly to assessed lodging businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific lodging businesses within the District. The activities described in this Plan are specifically targeted to increase room night sales for assessed lodging businesses within the boundaries of the District, and are narrowly tailored. TWCTMD funds will be used exclusively to provide the specific benefit of increased room night sales directly to the assessees. For example, assessment funds shall not be used to feature non-assessed lodging businesses in TWCTMD programs. Further, assessment funds shall not be used to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by this District is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in room night sales. The specific benefit of an increase in room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing and sales programs promoting lodging businesses paying the district assessment. The marketing and sales programs will be designed to increase room night sales at each assessed lodging businesses. Because they are necessary to provide the marketing and sales programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased room night sales to the assessed lodging businesses.

Although the District, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, "A specific benefit is not excluded from classification as a 'specific benefit' merely because an indirect benefit to a nonpayor occurs

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

2. Specific Government Service

The assessment may also be utilized to provide, “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.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the TWCTMD are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

3. Reasonable Cost

District services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by the VTV, and reports submitted on an annual basis to the County. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from district-funded activities, be featured in advertising campaigns, and benefit from other district-funded services. Non-assessed lodging businesses will not receive these, nor any other, district-funded services and benefits. Any business which submits a request to be removed from the District will also be removed from all District-funded services upon its removal.

The District-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-District funds. TWCTMD funds shall only be spent to benefit the assessed businesses, and shall not be spent on that portion of any program which generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is two percent (2%) of gross short term room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty; and stays pursuant to contracts executed prior to November 1, 2016.

Lodging business means: any structure or any portion of any such structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes and hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

Lodging business does not mean any of the following: any hospital, sanitarium, medical clinic, convalescent home, rest home, home for the aged people, foster home, or other similar facility

³ Government Code section 53758(a)

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code section 53758(b)

⁶ Government Code section 53758(b)

operated for the care or treatment of human beings; any asylum, jail, prison, orphanage or other facility in which human beings are detained and housed under legal restraint; any housing owned or controlled by an educational institution and used exclusively to house students, faculty or other employees, and any fraternity or sorority house or similar facility occupied exclusively by students and employees of such educational institutions, and officially recognized or approved by it; any housing operated or used exclusively for religious, charitable or educational purposes by an organization having qualifications for exemption from property taxes under the laws of California; any housing owned by a governmental agency and used to house its employees or for governmental purposes; any camp as defined in the Labor Code or other housing furnished by an employer exclusively for employees; any private dwelling house or other individually owned single-family dwelling unit rented only occasionally and incidentally to the normal occupancy by the owner or his or her family; provided, that the burden of establishing that the housing or facility is not a hotel or other lodging as defined herein shall be upon the operator thereof, who shall file with the County such information as the County may require to establish and maintain such status.

The term "gross room rental revenue" as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall be disclosed as the "TWCTMD Assessment." The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Penalties and Interest

The TWCTMD shall reimburse the County of Riverside Treasurer-Tax Collector for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent TWCTMD assessment are sought to be recovered in the same collection action by the County Treasurer-Tax Collector, the TWCTMD shall bear its prorated share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any lodging business which fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* Any lodging business which fails to remit any delinquent remittance on or before the first day of the next calendar month following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.

3. *Fraud:* If the County determines that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in paragraphs 1 and 2 above.
4. *Interest:* In addition to the penalties imposed, any lodging business which fails to remit any assessment imposed shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
5. *Penalties Merged With Assessment:* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid.

F. Time and Manner for Collecting Assessments

The TWCTMD assessment will be implemented beginning November 1, 2016 and will continue for five (5) years through October 31, 2021. The County Treasurer-Tax Collector will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each lodging business. The County Treasurer-Tax Collector shall take all reasonable efforts to collect the assessments from each lodging business. The County Treasurer-Tax Collector shall forward the assessments collected to the Owners' Association less the one percent (1%) fee.

VI. GOVERNANCE

A. Owners' Association

The Board of Supervisors, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the TWCTMD as defined in Streets and Highways Code §36614.5. The Board of Supervisors has determined that Visit Temecula Valley (VTV) will serve as the Owners' Association for the TWCTMD. The VTV Board may create a tourism marketing district committee to manage the TWCTMD funds and implement TWCTMD programs. A majority of the members of the committee shall be representatives of lodging businesses paying the TWCTMD assessment.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the VTV board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

The VTV shall present an annual report at the end of each year of operation to the Board of Supervisors pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

STREETS AND HIGHWAYS CODE

Division 18. Parking

Part 7. Property and Business Improvement District Law of 1994

Cal Sts & Hy Code Div. 18, Pt. 7 Note (2015)

*** This document is current through the 2015 Supplement ***
(All 2014 legislation)

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow 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.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or businesses in a business district are not taxes for the general benefit of a city, even if property or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special

benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed businesses and real property located in the district.

36606.5. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. "Business"

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ Association”

“Owners’ association” means 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. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

36617. Alternative method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent 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. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated

based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) **(1)** A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

36631. Time and manner of collection of assessment; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

- (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
- (b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
- (c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

MAP KEY	BUSINESS NAME	BUSINESS ADDRESS
1	AT THE VINEYARD VACATION GETAWAY	39840 CALLE DE VINEDOS, TEMECULA, CA 92591
2	BAILEY'S WINE COUNTRY ESCAPE	35450 CALLE NOPAL, TEMECULA, CA 92592
3	CARTER ESTATE WINERY AND RESORT, LLC	34450 RANCHO CALIFORNIA RD, TEMECULA, CA 92591
4	CHRISTA PILKINGTON, OWNER	39212 ANDROS ST, TEMECULA, CA 92592
5	INN AT CHURON WINERY	33233 RANCHO CALIFORNIA RD, TEMECULA, CA 92591
6	KIM & RICHARD JOHNS	35365 VILLA CERO VISTA, TEMECULA, CA 92592
7	MARK WOODSMALL, OWNER	44123 SANDIA CREEK, TEMECULA, CA 92590
8	PACIFIC SUN PROPERTIES, LLC	33500 LISA RD, TEMECULA, CA 92592
9	PERFECT GETAWAYS INC, JOHN H	39480 NORBRO CT, TEMECULA, CA 92592
10	QUE SYRAH	41300 BERKSWELL LN, TEMECULA, CA 92592
11	RANCHO DEL VINEDOS	39890 CALLE DEL VINEDOS, TEMECULA, CA 92589
12	RANCHO DEL VINO	41700 CAMINO DEL VINO, TEMECULA, CA 92592
13	RENEL NAVARRO	38025 CAMINO SIERRA RD, TEMECULA, CA 92592
14	RITA REIFF	46011 SANDIA CREEK DR, TEMECULA, CA 92590
15	ROBERT COAKE	35455 VIA SOL VISTA, TEMECULA, CA 92592
16	RON DECAPRIO	42600 CHAPARRAL DR, TEMECULA, CA 92592
17	SOUTH COAST WINERY	34843 RANCHO CALIFORNIA RD, TEMECULA, CA 92591
18	STEVEN & SANDRA HUTCHINSON	39460 HILT RD, TEMECULA, CA 92591
19	SUSAN HETRICK	36195 PALMADOR LN, TEMECULA, CA 92592
20	TEMECULA VACATION RENTALS	41575 VIA ANITA, TEMECULA, CA 92592
21	THE INN AT EUROPA VILLAGE	33350 LA SERENA WAY, TEMECULA, CA 92591
22	TWC VILLAS LLC	39625 ANZA RD, TEMECULA, CA 92591
23	VILLA SERENITA	39670 PARADO DEL SOL, TEMECULA 92592
24	VILLA BLANCA	39589 CALLE CABERNET, CA, TEMECULA 92591
25	VILLA DE LA VINE	41725 AVENIDA ORTEGA, TEMECULA, CA 92592
26	VILLA INSPIRATO	39670 PARADO DEL SOL, TEMECULA, CA 92592
27	VINEYARD HOUSE	36850 AVENIDA VERDE, TEMECULA, CA 92592
28	WILSON CREEK WINERY INC	35250 LOMA VENTOSO, TEMECULA, CA 92591
29	WINE COUNTRY ENTERPRISES, LLC	41830 BILLY JOE LN, TEMECULA, CA 92592
30	YINGWEI HOUSE	37780 VILLA BALBOA, TEMECULA, CA 92592
31	ZIN ESTATE	41965 MESA VERDUGO, TEMECULA, CA 92592

MEMORANDUM

DATE: September 13, 2016

TO: Honorable Chairman and Board Members

FROM: Heidi Marshall, EDA Assistant Director

SUBJECT: Resolution Declaring the Results of the Majority Protest Proceedings and Establishing the Temecula Wine Country Tourism Marketing District

RECOMMENDATION

Hold a final hearing, declare results of the majority protest proceeding, and adopt Resolution No. 2016-190.

RESULT OF RECOMMENDED ACTION

On July 26, 2016, the Board adopted a Resolution declaring its intention to establish the Temecula Wine Country Tourism Marketing District (TWCTMD). On August 23, 2016, the Board held a public meeting for comments on the proposed TWCTMD. This final hearing and resolution are the last steps necessary to establish the TWCTMD.

Adoption of this Resolution will create the TWCTMD and significantly increase revenues for the promotion of tourism in Temecula Wine Country. It will not impact the County's budget, although it should increase the transient occupancy tax and sales tax if more tourists visit Temecula Wine Country. The County will incur some expense in administering the assessment funds; however the Management District Plan provides that the County will keep one percent (1%) of revenue collected to offset administration expenses.

BACKGROUND

The Temecula Wine Country Tourism Marketing District (District) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Temecula Wine Country lodging businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive additional room nights. The proposed District includes all lodging businesses located within the boundaries of the the Temecula Valley region of the County of Riverside.

Hoteliers decided to pursue formation of the District in order to create a revenue source devoted to marketing Temecula Wine Country as a tourist, meeting and event destination. If established, the District would generate approximately \$188,500 on an annual basis for promotion of travel and tourism specific to Temecula Wine Country.

TOURISM MARKETING DISTRICTS

Tourism Marketing District utilize 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 District, and those funds are used to provide services that the businesses desire and that specifically benefit the lodging businesses within the District.

District 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, Tourism Marketing Districts are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. The key difference between TMDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.

MANAGEMENT DISTRICT PLAN

The Management District Plan (**Attachment 1**) includes the proposed boundary of the District, a service plan and budget and a proposed means of governance. The District will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the the Temecula Valley region of the County of Riverside. Once per year, assessed businesses shall have a thirty (30) day period of opportunity to request to be removed from the District. The first such period shall begin upon adoption of the resolution forming the District. Subsequent period shall being on the anniversary of the adoption of the resolution forming the District. A new business, upon issuance of a certificate of occupancy or registration with the County Treasurer, shall have thirty (30) days to request to be removed from the District. Requests to be removed must be submitted to the County in writing, identify the business to be removed, and be signed by an authorized representative of the business. At the same time, a business which has previously requested to be removed from the District may submit a request to be included. After each annual thirty (30) day opt out/in period, the County shall provide a current list of all assessed businesses in the District to the Owners' Association.

The proposed TWCTMD will have a five (5) year life. The assessment will be implemented beginning November 1, 2016 through October 31, 2021. Once per year beginning on the anniversary of district formation there is a 30-day period in which business owners paying more than 50% of the assessment may protest and begin proceedings to terminate the district.

The County will be responsible for collecting the assessment on a monthly basis from each lodging business located in the District boundaries. The County shall forward the assessments to Visit Temecula Valley, which will have the responsibility of managing District programs as provided in the Management District Plan. The County shall be paid a fee equal to one percent (1%) of the amount of assessment collected to cover its costs of collection and administration.

DISTRICT FORMATION PROCESS

July 26, 2016

RESOLUTION OF INTENTION HEARING - *Completed*

Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the Board of Supervisors may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district.

The Board of Supervisors have expressed their desire to reduce the boundary of the district. This proposed change to the district may be adopted by the Board of Supervisors at the conclusion of the public hearing. The attached Management District Plan shows the proposed changes requested by the Board of Supervisors that may be adopted at the conclusion of the public hearing.

Petition Status: Petitions in favor of district formation were submitted by seven (7) hotels, which represent 88.97% of the total district assessment. This majority petition allows the Board to initiate proceedings for district formation at the July 26, 2016 meeting.

July 27, 2016

NOTICE - *Completed*

The Property and Business Improvement District Law of 1994 requires the County mail written notice to the owners of all businesses proposed to be within the district. Mailing the notice begins a mandatory forty-five day period in which owners may protest district formation.

August 23, 2016

PUBLIC MEETING - *Completed*

Allow public testimony on the establishment of the District and levy of assessments. No council action required.

September 13, 2016

FINAL PUBLIC HEARING

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

To date, the Clerk has received protests from businesses representing % of the total proposed assessment. The Board can adopt this resolution as long as there is no majority protest.

At the conclusion of the public hearing to establish the district, the Board 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. Proposed assessments may only be revised by reducing any or all of them.

If the Board, following the public hearing, decides to establish the proposed property and business improvement district, the Board shall adopt a resolution of formation.

ALTERNATIVES

The Board could choose not to adopt Resolution No. 2016-190. Staff does not recommend this option.

FISCAL IMPACT

None immediately. The County will receive a fee of one percent (1%) of the amount collected to cover its costs of administration. Because the district programs are intended to increase visitation to the County, there may be an increase in transient occupancy tax and sales tax collections.