



MEMORANDUM

TO: City Council

FROM: Whitney McDonald, City Manager

BY: Isaac Rosen, City Attorney
Sarah Lansburgh, Deputy City Clerk

SUBJECT: Consideration of Annual Report, Adoption of Resolution of Intention to Levy Annual Assessments for the AGTBID; Consideration of Alternatives for Future of AGTBID

SUMMARY: Consideration of alternatives for future of AGTBID to include potential disestablishment in accordance with State Law

DATE: April 25, 2023

SUMMARY OF ACTION:

Receive and approve the Annual Report, which provides information on the activities of the Arroyo Grande Tourism Business Improvement District (AGTBID) during the past year and adopt a Resolution that would continue the levy of annual assessments for AGTBID for another year. As part of the review of the Annual Report and consideration of the Resolution, alternatives have been presented regarding the future of the AGTBID, including but not limited to disestablishing the AGTBID.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Based on the anticipated year-end results for 2022-23, the assessments expected to be collected total approximately \$270,000 for Fiscal Year 2022-23. The AGTBID budget provides \$5,000 to the City to cover a portion of the City's cost associated with supporting a Community Services Specialist position for vacation rental code compliance. The AGTBID budget also provides \$3,000 to the City for administrative support and \$42,000 to the South County Chambers of Commerce (Chamber) to administer the AGTBID.

RECOMMENDATION:

1) Receive and approve the Annual Report; 2) Adopt a Resolution of Intention to levy and collect assessments within the Arroyo Grande Tourism Business Improvement District (AGTBID) area for Fiscal Year 2023-24, or provide direction to staff regarding AGTBID alternatives, including but not limited to the possibility of the disestablishment of the AGTBID and winding up of its affairs in accordance with applicable State law; 3) If the

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Resolution of Intention to levy and collect assessments within the AGTBID area for Fiscal Year 2023-24 is adopted, set the date for a public hearing for May 23, 2023, in accordance with Streets and Highways Code Section 36534; and 4) Determine that approving the annual report and adopting a resolution of intention to levy and collect assessments, or alternatively providing other direction to City staff on the future of AGTBID, is not subject to the California Environmental Quality Act ("CEQA") because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.).

BACKGROUND:

In May 2013, the City Council adopted an Ordinance establishing the AGTBID. The AGTBID was formed under the Parking and Business Improvement Law of 1989, Sections 36500 et. seq. of the Streets and Highways Code and incorporated into the Arroyo Grande Municipal Code (AGMC) in Title 3, Chapter 3.46.

The purpose of forming the AGTBID was to provide revenue to defray the cost of services, activities, and programs promoting lodging businesses in the AGTBID through the promotion of scenic, recreational, cultural, and other attractions in the AGTBID as a tourist destination. An assessment is levied on all lodging businesses within the AGTBID boundaries and is based upon two percent of the rent charged by the operator per occupied room per night for all transient occupancies.

In December 2014, the City Council adopted an Ordinance amending Chapter 3.46 of the Arroyo Grande Municipal Code to provide that the same exemptions that apply to the Transient Occupancy Tax apply to AGTBID assessments and amended the definition of "lodging" to include vacation rentals and homestays.

In accordance with the provisions in the Streets and Highways Code and AGMC Section 3.46.100, the City Council appointed an Advisory Board. Pursuant to Streets and Highways Code Section 36533, the Advisory Board is to prepare an annual report, which is to be submitted to the City Council for its review and approval. AGMC Section 3.46.060 also provides that the assessments for the AGTBID are to be reviewed annually by the City Council based upon the Annual Report of the Advisory Board, and after approval of the Annual Report, the City Council is to follow the hearing process outlined in Streets and Highways Code Section 36534 for the annual assessment for the upcoming fiscal year. Section 36534 provides for the adoption of a Resolution to levy an annual assessment for that fiscal year. The Resolution also sets a public hearing date in order to receive any written or oral protests against the continuation of the AGTBID as required by the applicable statute.

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The AGTBID has been in effect for almost nine (9) years. In January 2018, the City Council combined the Tourism Marketing Committee, which was coordinated by the Chamber of Commerce, and the Advisory Board, increasing the number of members of the Advisory Board from a minimum of three (3) to not more than nine (9). The Advisory Board implements the programs and activities funded through the AGTBID. The South County Chambers of Commerce administers the AGTBID program; therefore, minimal staff time has been required by the City.

In June 2018, the Council approved an Agreement with Verdin Marketing for tourism marketing services. Since that time, a tourism website, rebranding of Visit Arroyo Grande, a monthly e-newsletter, advertising campaigns, a tourism strategic plan, and other marketing efforts have been developed and implemented. The term of the initial contract with Verdin Marketing expired on June 30, 2022. The City, on behalf of the AGTBID, issued a Request for Proposals (RFP) for marketing, communications, website management, and social media services for Visit Arroyo Grande.

On June 14, 2022, the City Council reviewed the proposals from Madison Strategies & Cassandra Maher Marketing and Verdin Marketing. Ultimately, the City Council selected Verdin Marketing for AGTBID tourism marketing services and authorized City Manager Whitney McDonald to enter into an Agreement for Consultant Services in an amount not to exceed the approved budget amount in a form approved by the City Attorney. The Agreement commenced on July 1, 2022 and continues in effect until June 30, 2023, with the City having the sole option to extend the Agreement for one (1) year. On February 14, 2023, the City Council approved a one-year extension to the Agreement for Contractor Services between Verdin Marketing and the City of Arroyo Grande.

On February 28, 2023, Council directed staff to include in a future agenda item an analysis of the options available and procedures required were the City to consider disestablishing the AGTBID. As a result, this information has been included in this report and presented for discussion and direction of the City Council.

ANALYSIS OF ISSUES:

On April 3, 2023, the Advisory Board reviewed and approved the Annual Report and has forwarded it to the City Council for consideration. As noted above, following approval of the Annual Report and adoption of the Resolution, the next step in the process for collecting assessments over the next year is to schedule a public hearing, which is recommended to occur at the City's May 23, 2023 City Council meeting. The public hearing will allow lodging businesses subject to the assessment to submit comments, voice concerns, and protest the assessment. As set forth in Sections 36524 and 36525 of the California Streets and Highways Code, the City Council has the ability to continue to levy and collect the proposed citywide AGTBID assessment at the May 23, 2023 public hearing, unless written protests are received from lodging businesses that pay 50% or

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more of the proposed assessments. In that event, the Council cannot consider continuation of the AGTBID assessments for at least one year.

The current AGTBID budget for Fiscal Year 2022-23 is provided in Attachment 3. Current projections for the AGTBID revenue and expenditures are provided in Table 1 below.

Table 1

Fund Center - Tourism Business Improvement District (TBID)

FY 2022-23

Year-to-Date (YTD) Estimated Actuals through March

(March - 75% of Year)	Budget FY 2022-23	YTD March	% of Budget	Fav/(Unfav) Variance	Comments
Revenue					
TBID Assessments	244,000	191,682	78.6%	(52,318)	Assessments for July - February
Other Revenue	750	-	0.0%	(750)	
Total Revenue	244,750	191,682	78.3%	(53,068)	
Expenditures:					
Advertising	200,000	149,919	75.0%	50,081	Verdin charges Jul-January
Contractual Services	47,500	36,000	75.8%	11,500	July - Mar Chamber payments & City Admin
Website Re-design	25,000	5,000	20.0%	20,000	
STR Code Compliance	5,000	3,336	66.7%	1,664	
Memberships & Subscriptions	500	-	0.0%	500	Central Coast Tourism Council
Public Relations	15,000	-	0.0%	15,000	Co-op
Total Expenditures	293,000	194,255	66.3%	98,745	
Change in Fund Balance	(48,250)	(2,573)		45,677	

Beginning Fund Balance	405,833
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Ending Fund Balance	403,260
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Options for Modifying or Disestablishing AGTBID

In addition to the option of continuing the AGTBID by levying assessments following a public hearing as proposed above, the City Council can consider a range of changes to the structure of the AGTBID. Such changes may include filling the administrative role that is handled by a third party contractor (i.e. Chamber) with in-house City staff; changing the makeup of the AGTBID Advisory Board; or disestablishing the AGTBID altogether and winding up its affairs.

In terms of the makeup of the AGTBID Advisory Board, State law is clear that the City Council “may designate existing advisory boards or commissions to serve as the advisory board for the area or may create a new advisory board for that purpose.” (Streets and Highways Code § 36530.) This means the Council can either appoint one of its other existing boards or commissions to also serve as the AGTBID Board or can remove specified Board members and replace them with one-off appointees, subject to Brown Act considerations.

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The AGTBID Bylaws currently contain the following provisions governing the Advisory Board's membership:

Section 2: Membership

Board members shall be appointed by the City Council. The total membership of the Board shall consist of a minimum of three (3) but not more than nine (9) members, 2/3rds of which shall be owners of lodging businesses within the AGTBID or others with knowledge of tourism and/or the lodging industry.

Membership on the Board shall be exempt from City residency requirements otherwise applicable to other City Advisory Boards. Criteria and selection for membership shall not discriminate based upon sex, race, religion, creed, color, age, national or ethnic origin, or any other classification protected by law.

The City Council Handbook further describes the process used to select and appoint members of the Advisory Board, and the City's other advisory bodies, as follows:

5.2 Appointment

Pursuant to Council Resolution, the City Council appoints representatives to the following City boards, commissions and committees:

- Planning Commission
- Downtown Parking Advisory Board
- Architectural Review Committee
- Tourism Business Improvement District (TBID) Board
- Community Service Grant Program (CSGP) Committee

With exception to the TBID Board, where members are appointed by the full Council, the Mayor and each Council Member shall appoint one representative to each respective Commission/Board/Committee. All appointments are subject to approval by a majority of the Council.

Members of each respective Commission/Board/Committee shall serve for a term ending the January 31st following the expiration of the term of the respective appointing Mayor or Council Member, as applicable. The exception to this process is the TBID Board, which consists of a minimum of three (3) and a maximum of nine (9) members appointed by the City Council. Vacancies on the TBID Board are administered by the South County Chambers of Commerce (Chamber), in coordination with City staff, and applicants are recommended to the Council for appointment by the

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Chamber. Members of each respective Commission/Committee/Board may be removed prior to expiration of their term by a majority vote of the Council.

Applicants, with the exception of the Downtown Parking Advisory Board, and TBID Board must be registered voters of Arroyo Grande. Applicants for the Downtown Parking Advisory Board shall have a business within the Arroyo Grande City Parking and Business Improvement Area. Two-thirds of appointees to the TBID Board shall be owners of lodging businesses within the Arroyo Grande Tourism Business Improvement District or others with knowledge of tourism and/or the lodging industry.

Currently, the Advisory Board has three members. Over the past several months, the Chamber has encountered difficulties filling the remaining vacancies with members who meet the requirements and intent of the bylaws. Council may wish to consider modifying the Advisory Board membership and appointment process to help ensure that vacancies are filled. One option is for the Advisory Board appointment process to mirror that used for the City's other advisory bodies whereby each Council Member would appoint a member of the AGTBID Advisory Board. The AGTBID Bylaws and Council Handbook could specify that at least three of the appointed members of the Board must be owners of lodging businesses within the AGTBID or have direct experience within the tourism and/or lodging industry. This approach is similar to the City's Architectural Review Committee, which, by Council Resolution, is required to include at least three individuals who are qualified architects or design professionals.

Alternatively, the City Council can consider disestablishing the AGTBID; this is a formal legal process outlined by State law. Pursuant to Streets and Highways Code section 36550(a), Council may disestablish the TBID area by adopting a resolution of intention, holding a public hearing, adopting an ordinance confirming the disestablishment, and making certain refunds as required by state law. The procedural outline for this process is as follows:

1. Staff prepares, for City Council's consideration, a Resolution of Intention to disestablish the AGTBID area. The Resolution must state the reason for the disestablishment, the time and place of a public hearing for a required subsequent ordinance disestablishing the AGTBID, and a proposal regarding how the AGTBID plans to dispose of any assets acquired with the revenues of the assessments levied within the AGTBID. Legal counsel can work with City staff to prepare this material should Council wish to proceed in this manner.
2. Then, the City Council agendaizes adoption of the Resolution of Intention (adoption of the Resolution does not require a public hearing). Again, adoption of the Resolution must include a date for a public hearing on the ordinance, which date must be set in the window of 20-30 days after the adoption of the Resolution of Intention.

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3. After adoption, the Resolution of Intention must be published in a newspaper of general circulation in the City one time, at least 7 days before the public hearing date on the ordinance. A complete copy of the Resolution must also be mailed (by first-class mail) to each business owner within the AGTBID area, within 7 days of the Council's adoption of the Resolution.
4. The City Council then holds a public hearing to consider the ordinance to disestablish the AGTBID, on the date provided in the Resolution of Intention. There is no "majority protest" proceeding at the hearing, unlike when a protest by 50% or more of those paying the assessment can delay or block the establishment of a TBID or the continued levy of assessments against them. This means that the AGTBID can be disestablished even if business owners protested the action.
5. If the ordinance is adopted and the AGTBID disestablished, notice of this disestablishment must be published once in a newspaper of general circulation not later than 15 days from adoption of the ordinance.
6. If the Council provides direction to disestablish the AGTBID, there is also an associated "windup" process. This entails making a refund, to all business owners against which TBID assessments were levied, of "any remaining revenues" derived from past assessments or the sale of assets acquired with those assessment funds. Money derived from AGTBID assessments can be spent on lawful purposes, up to the point of formal disestablishment. (Streets & Highways Code §§ 36506, 36551.)

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff recommendations, or provide direction to staff regarding the future of AGTBID more generally;
2. Request changes or clarification to the Annual Report and/or Resolution of Intention;
3. Do not approve staff recommendations; or
4. Provide other direction to staff.

ADVANTAGES:

The recommendations will enable the City to extend the AGTBID, which provides a mechanism to generate funding to promote lodging stays and tourism in the City, in turn increasing transient occupancy tax revenue and supporting local businesses. If Council directs staff to undertake the steps necessary to disestablish the AGTBID, the City Council will have determined that the TBID has fulfilled its original purpose and is no longer of benefit to local businesses or the City.

DISADVANTAGES:

No disadvantages with approving the Annual Report and adopting the Resolution levying the assessment for another year are identified. Disadvantages associated with opting to

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disestablish the AGTBID are speculative beyond no longer collecting the assessment, but could include a reduction in tourism in response to decreased spending on attracting new or returning visitors using AGTBID resources.

ENVIRONMENTAL REVIEW:

Approving the annual report and adopting a resolution of intention to levy and collect assessments, or alternatively providing other direction to City staff on the future of AGTBID, is not subject to the California Environmental Quality Act ("CEQA") because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378).

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Resolution
2. Annual Report
3. AGTBID FY 2022-23 Budget