

# REQUEST FOR COUNCIL ACTION



**CITY COUNCIL MEETING DATE:**

**NOVEMBER 17, 2020**

**TITLE:**

**PUBLIC HEARING - REGARDING THE  
PROPOSED FORMATION OF THE SANTA  
ANA TOURISM MARKETING DISTRICT**

**CLERK OF COUNCIL USE ONLY:**

**APPROVED**

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1<sup>st</sup> Reading
- ☐ Ordinance on 2<sup>nd</sup> Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For \_\_\_\_\_

**CONTINUED TO** \_\_\_\_\_

**FILE NUMBER** \_\_\_\_\_

/s/ Kristine Ridge

CITY MANAGER

## **RECOMMENDED ACTION**

1. Conduct a public hearing to consider all protests regarding the intention to levy an assessment regarding the proposed formation of the Santa Ana Tourism Marketing District.
2. Review any written protests filed prior to the close of the public hearing and determine whether they constitute a majority protest.
3. If the City Council determines that no valid majority protest was lodged, adopt a resolution confirming the establishment of the Santa Ana Tourism Marketing District.

## **DISCUSSION**

At the September 15, 2020 meeting, City Council adopted Resolution No. 2020-076 declaring the City Council's intention to form the Santa Ana Tourism Marketing District (SATMD) and gave notice of the time and place of a public meeting and public hearing on the establishment of the District and the levy of assessments. The Resolution set the public meeting for October 6, 2020 and set the public hearing for November 17, 2020.

The Santa Ana Tourism Marketing District is a benefit assessment district proposed to create a revenue source to help fund marketing and sales promotion efforts for Santa Ana lodging businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive additional room nights to assessed lodging businesses. The established SATMD includes all lodging businesses with seventy (70) rooms or more located within the boundaries of the City of Santa Ana. There are 18 of those lodging businesses.

Lodging business owners decided to pursue establishment of the SATMD in order to create a revenue source devoted to marketing Santa Ana as a tourist, meeting, and event destination. If established, the SATMD would generate approximately \$2,400,000 (Pre-COVID estimate) on an annual basis for promotion of travel and tourism specific to Santa Ana. These funds would be solely controlled by the Travel Santa Ana Board of Directors, a non-profit that will be established to administer this new marketing district.



The Property and Business Improvement District Law of 1994 (the 1994 Act) grants cities the authority to establish these types of districts. The 1994 Act also requires that upon adoption of the Resolution declaring the City's intent, the City must mail written notice to all businesses within the SATMD, 45 days before the November 17, 2020 Public Hearing. The notice was mailed on September 16, 2020 and began the mandatory period in which owners may protest SATMD formation.

At this public hearing, if written protests are received from the owners of lodging businesses which pay more than fifty percent (50%) of the assessments proposed to be levied, no further proceedings to levy the proposed assessment against the lodging businesses shall be taken for a period of one (1) year from the date of the finding of a majority protest by the City Council. To date, the City has received seven petitions from hotels in support of the District. These seven pay 58% of the assessments proposed to be levied. Therefore, unless one of the hotels in support changed their position, the remaining hotels would not make up more than 50% of the proposed assessment to protest the establishment of the District.

At the conclusion of the public hearing to establish the SATMD, the City Council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them.

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

#### **FISCAL IMPACT**

The City's Finance and Management Services Agency will levy the assessments and deposit the receipts into the Santa Ana Tourism Marketing District, Trust & Agency account (No. 09601001-24054). The City will retain a fee of two percent (2%) of the amount collected to cover its costs of administration and these amounts will be deposited into the Finance and Management Services Expense Reimbursement account (No. 01110002-57000). The remainder of the funds will be disbursed to the Travel Santa Ana organization from the Trust & Agency account. As the SATMD programs are intended to increase visitation to the City, there may be an increase in transient occupancy tax and sales tax collections.

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Steven A. Mendoza, Executive Director – Community Development Agency  
Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Exhibit: 1. Resolution of Intention to Establish SATMD



# EXHIBIT 1

## RESOLUTION NO. 2020-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA DECLARING RESULTS OF MAJORITY PROTEST PROCEEDINGS AND ESTABLISHING THE SANTA ANA TOURISM MARKETING DISTRICT ("SATMD")

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby, finds, determines and declares as follows:

- A. The Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes the City to establish business improvement districts upon petition by a weighted majority of the business owners located within the boundaries of the district; and
- B. 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 SATMD have petitioned the City Council to establish the SATMD; and
- C. Included with the petitions was a Management District Plan ("Plan") summary that describes the proposed assessment to be levied on lodging businesses with seventy (70) or more rooms within the SATMD to pay for sales and marketing programs, and other improvements and activities set forth in the Plan; and
- D. The assessed lodging businesses within the SATMD will receive a specific benefit from the activities and improvements set forth in the Plan; and
- E. On September 15, 2020 at 5:45 PM at Council Chambers located at 22 Civic Center Plaza, Santa Ana, CA 92701, the City Council adopted a Resolution of Intention, Resolution No. 2020-076; and
- F. The public meeting and public hearing to consider the establishment of the SATMD have been properly noticed in accordance with Streets and Highways Code §36623; and
- G. On October 6 at 5:45 PM at Council Chambers located at 22 Civic Center Plaza, Santa Ana, CA 92701, the City Council held a public meeting regarding the establishment of the SATMD, and the City Council heard and



received objections and protests, if any, to the establishment of the SATMD and the levy of the proposed assessment; and

- H. On November 17, 2020 at 5:45 PM at Council Chambers located at 22 Civic Center Plaza, Santa Ana, CA 92701, the City Council held a public hearing regarding the establishment of the SATMD, and the City Council heard and received all objections and protests, if any, to the establishment of the SATMD and the levy of the proposed assessment; and
- I. The City Clerk has determined that there was no majority protest. A majority protest is defined as written protests received from owners of assessed businesses in the established SATMD 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
- J. The City 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 City 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.

Section 2. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.

Section 3. The SATMD is hereby established for a five (5) year term, beginning January 1, 2021 through December 31, 2025.

Section 4. The Plan dated March 19, 2020 is hereby adopted and approved.

Section 5. The activities to be provided to benefit businesses in the SATMD 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 SATMD; to provide activities or improvements outside the SATMD; or for any purpose other than the purposes specified in this Resolution, the Resolution of Intention, and the Plan. Notwithstanding the foregoing, improvements and activities that must be provided outside the SATMD boundaries to create a specific benefit to the assessed businesses may be provided, but shall be limited to marketing or signage pointing to the SATMD.

Section 6. The City Council finds as follows:

- a) The activities funded by the assessment will provide a specific benefit to assessed businesses within the SATMD 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 SATMD 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 "Tourism Marketing Assessment" or "Tourism Assessment" as specified in the Plan.

Section 7. The assessments levied for the SATMD shall be applied towards sales and marketing programs to market Santa Ana lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.

Section 8. 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 of any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty; stays pursuant to contracts executed prior to January 1, 2021; and stays by any federal or state officer or employee while on official business only and when payment for such occupancy is made directly to the operator by duly authorized voucher payment from a governmental accounting office. This exemption does not exempt a transient who is employed by the United States government or the state or their respective instrumentalities from payment of the assessment when the payment is later to be reimbursed by the United States government or the state or their respective instrumentalities.

Section 9. 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.

Section 10. The assessments for the entire SATMD will total approximately \$2,400,000 in year one (1).



Section 11. Bonds shall not be issued to fund the SATMD.

Section 12. The SATMD shall include all lodging business with seventy (70) rooms or more located within the boundaries of the the City of Santa Ana. A boundary map is attached hereto as Exhibit A and incorporated herein by reference.

Section 13. 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 SATMD assessment is levied as long as they are used consistent with the requirements set forth herein.

Section 14. The assessments to fund the activities and improvements for the SATMD will be collected by the City of Santa Ana on a monthly basis, and in accordance with Streets and Highways Code §36631.

Section 15. The City Council, 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 SATMD as defined in Streets and Highways Code §36612. The City Council has determined that Travel Santa Ana shall be the SATMD Owners' Association.

Section 16. Travel Santa Ana, 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 SATMD.

Section 17. The SATMD 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.).

Section 18. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the formation of the SATMD and to levy the assessments.

Section 19. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

By:   
\_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_

NOT PRESENT: Councilmembers \_\_\_\_\_

#### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2020-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana



## Exhibit A Boundary Map

