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Date	Ver.	Action By	Action	Result
8/21/2018	1	Council and Authorities Concurrent Meeting		

INFORMATIONAL REPORT TO COUNCIL

SUBJECT

Informational Report on the Convention-Visitors Bureau Agreement and Convention Center Management Agreement with the Santa Clara Chamber of Commerce

EXECUTIVE SUMMARY

On July 17, 2018, an Informational Report on the Management Agreement with Santa Clara Chamber of Commerce/Convention-Visitors Bureau for Management of the Santa Clara Convention Center was presented to Council (attached).

As discussed in the July 16 report, the two Council actions (May 22 and June 26) have had an impact on the governance structure originally in place for convention and visitor services in Santa Clara and City staff's ability to implement the full City Council direction with respect to marketing and booking events at the Convention Center. The purpose of this Informational Report is to 1) provide the Council with a further update on matters relating to the Convention-Visitors Bureau (CVB); Convention Center; Tourism Improvement District (TID) and Chamber of Commerce, and 2) advise the City Council on issues that will be before the City Council in the September timeframe for further action.

BACKGROUND

Convention & Visitors Bureau

On June 26, 2018, the Council made a policy decision not to authorize a new 1-year agreement with the Chamber for convention and visitor services and provided funding to the Chamber for 60 days of salaries and benefits for CVB employees. Understanding that there would be some disruption of service, Council requested staff review the potential of securing a third party consultant/contractor to assist; however, when reviewed against the legal obligations in the Convention Center Management

Agreement, the Chamber is still legally responsible for performing marketing and booking duties for the Convention Center.

CVB offices were effectively closed for business as of July 20, 2018. Following the office closure, the Chamber requested the City vacate the CVB office space in the Chamber building and remove City assets by August 1 in order to prepare the space for new tenants. CVB records and most of the City assets were retrieved by the August 1 deadline. City movers removed the balance of furniture on August 6. All former CVB employee emails and phones have been forwarded to staff at the Convention Center and the Convention Center's Sales Director is handling response to the emails and telephone calls.

Convention Center has reported that they are following up on the leads previously generated by CVB staff, but they have also reported that there is a finite ability to absorb the work effort of the entire CVB operation within the existing sales and marketing staff (one Convention Center staff and two ARAMARK staff).

Convention Center

Both the Chamber and City have publicly agreed that the 1984 Management Agreement is severely outdated and lacks basic performance requirements/objectives and management controls. As described in the July 16, 2018 Informational Report, the Management Agreement provides each party with the right to terminate the Agreement with a 180-day notice. Staff will be seeking direction from the Council in regard to transitioning out of the existing contract before the required termination notice of 180 days.

The Auditor has informed both the Chamber CEO/President and City Manager of her preliminary findings and will be issuing the final report over the next couple of weeks. Final audit findings will be presented to the City Council in the September timeframe along with responses from the City and, if desired, the Chamber. The preliminary findings are present significant additional work that we will have to complete as our close out reconciliation process. As already noted above, the City Manager will recommend that the City Council seek early termination of the Management Agreement and relieve the Chamber of the legal obligations to market and book the Convention Center and allow the City to focus on the audit findings. As has been stated at several public meeting, the City will need a contract manager staff position to support contract management for these services (which has been a shortcoming on the part of the City) and correct deficiencies articulated in the final audit.

Although the City has an interest in seeking independent third-party consultant services to supplement the sales and marketing services for the Convention Center, the Management Agreement still provides legal authority for the Chamber to provide these services and, therefore, the City is not able to independently put in place interim services without the approval of the Chamber. As a result, it is unlikely that interim services will be fully implemented until further action regarding the Management Agreement is taken by the City Council and/or Chamber.

Tourism Improvement District

While most of the CVB marketing positions were funded through the annual City CVB contract, two positions were funded by the Tourism Improvement District. Although funds are frozen right now until the District is legally compliant with State law, the funding mechanism for these employees remains intact. Nonetheless, as far as staff understands, the Chamber put TID employees on administrative leave and presented them with a termination notice effective the end of August.

Staff anticipates that the TID will start collecting funds again as of September 1, 2018. TID funds are transmitted from hotels to the City quarterly and made available for use by the City the month after a quarter ends. Therefore, partial quarter funds will be available to the TID in October and a full quarter in January 2019. Over the coming months we will be working closely with the TID hotels to better structure the overall governance and the process by which funds will be collected, allocated and spent. The TID will need to determine whether any amendments to its Bylaws are required given that the Chamber has discontinued employment with TID funded employees and, for that purpose, the Chamber was named as fiscal agent in the Bylaws. That is a determination for the TID to make, but City is monitoring because the City, as the taxing authority, issues the levied assessments to the named fiscal agent.

The performance audit process, and preliminary findings, of the Convention Center and CVB have revealed that the operation and funding of the TID are interwoven in the financial and operational structure of the Convention Center and CVB. **Staff will be returning to Council on August 28, 2018 to request augmentation of the TAP International contract to include a financial audit of the TID.**

Last, as part of this process, the City learned that a sizable fund reserve exists from TID assessments and that, as fiscal agent, the Chamber holds those funds. Given the corrective action scheduled for Council consideration for the August 28, 2018 Council meeting, the use of the reserve funds is legally not permitted for one year. This means that the TID's budget cannot depend on drawing down from reserves and that an amended FY 2018/19 budget will be presented to the Council at the August 28 meeting.

Open Letter to Business Community

The Chamber published an open letter to its membership regarding the City Council's actions on the Convention Center and CVB contracts. There were many false or misleading statements made about the City and the City Council. To respond to this, the City posted an open letter (Attachment 2) to its website, distributed through the City's social media channels, and sent it to the business community. The letter acknowledges the City's commitment to its strong and continuing partnership with the business community to work together to accomplish the Council goal of promoting and enhancing economic and housing development and enhancing community engagement and transparency. The letter also provides information and facts surrounding recent actions taken by the Council relative to the review of the Chamber of Commerce's contracts and the preliminary observations from performance and fiscal auditor. As was publicly reported, those findings include the following:

- Material inconsistencies were found between the Chamber's federal filings (e.g., Form 990: Return of Organization Exempt from Income Tax) and the practices that the Chamber claimed to have in place with the City to protect against conflicts of interest.
- There is a long-standing practice that the Chamber (since the Convention Center opened), on its own initiative, grants 20% discounts to Chamber members that rent Center space without any public disclosure, approval, or reporting of lost revenue to the City.
- There is preliminary evidence that the Chamber grants itself complete discounts on space rental for Chamber events and only pays for food and beverages, including major Chamber fund-raising events, providing significant financial value to the Chamber.
- These discounts were not disclosed to the City and the value of the discounts, which is lost public revenue funds, has not been determined. Analysis is underway to determine whether this is a material conflict of interest and/or self-dealing; whether Board members used their

role to benefit each other; and/or, a violation of State law with respect to political fund-raiser(s) held at the City-owned Center.

The letter and additional background information on the Convention Center and CVB issues are located on a dedicated webpage on the City's website, which can be found at www.santaclaraca.gov/cvb-chamber <<http://www.santaclaraca.gov/cvb-chamber>>. As both the City and Chamber prepare for the issuance of the final audit, it is important for residents and the business community to hear from the City organization on the Council's due diligence, and basis for taking these recent actions, particularly since more details will be presented over the next weeks.

Administrative Decisions

As a result of the City's recent examination of Convention Center policies and procedures, questions about Convention Center general assistance for two programs came to light: 1) hospitality at Art & Wine Festival and 2) Leadership Santa Clara.

Historically, the Convention Center has provided food and service for the Sponsor Hospitality area at the City's Art & Wine Festival. The Convention Center underwrote this approximately \$6,000 cost through its marketing budget. Based on our financial relationship, City public funds were the source of the Convention Center's financial support for the sponsor hospitality. Convention Center management had initially advised the Parks and Recreation Department (as the organizing City department for Art & Wine), that it would not be sponsoring the event this year. However since City Convention Center funds would be used to sponsor another City's event which was less than six weeks away, it didn't seem productive to cancel the hospitality support. The City will fund the approximately \$6,000 hospitality cost through the savings realized from the unfunded CVB contract. This will minimize disruption with the Art & Wine event sponsors and will keep Parks staff focused on the execution of the overall event rather than soliciting additional sponsors for hospitality.

Secondly, Leadership Santa Clara, another City-sponsored program, has traditionally used the Convention Center for one full day of class. The \$2,000 cost of food and beverage for the day has traditionally been funded by the Convention Center marketing fund. As a City of Santa Clara sponsored program, it seemed prudent to allow Leadership Santa Clara's use of a room at the Convention Center at no charge for the 2019 program and to fund the food and beverage cost from the City's Convention Center Fund using savings from the frozen Chamber management fee. This will allow Leadership Santa Clara to maintain the programming and assist in the continuing effort to minimize the cost burden for the program participants.

Next Steps

As mentioned above, there will be several items on future Council agendas for review, consideration and direction. These items include:

- Request for approval of an amendment with TAP International to include an audit of the Tourism Improvement District (August)
- Request to re-establish Tourism Improvement District (August)
- Presentation of findings of the Convention Center and CVB audit (September)
- Request for direction on Convention Center Management Agreement (September)

COORDINATION

This report has been coordinated with the City Attorney's Office.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no additional cost to the City other than staff time and expense.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. July 16, 2018 - City Manager Informational Report to Council
2. Open Letter to Business Community