



County of Monterey

Item No.14

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: PAR 24-006

April 23, 2024

Introduced: 4/12/2024

Current Status: Scheduled PM

Version: 1

Matter Type: Preliminary Analysis
Report

Receive a preliminary response by the County Economic Development Manager to Board referral No. 2024.03 regarding the examination of confidential sales or transactions and use tax records for the purpose of forming a wine improvement/heritage district.

RECOMMENDATION:

It is recommended that the Board of Supervisors

- a. Receive a preliminary response to Board Referral No. 2024.03 and;
- b. Direct staff to:
 - i. Proceed with completion of referral; or
 - ii. Return to the Board with more comprehensive analysis of referral and anticipated effort for completion; or
 - iii. Receive referral response as complete; and
- c. Provide further direction, as appropriate.

PRELIMINARY ANALYSIS:

Referral Summary & Background: Referral 2024.03 was submitted by Supervisor Lopez and assigned to the County Administrative Office (CAO) on 03/12/2024. The referral seeks to allow a third-party organization (Civitas Advisors and Monterey County Vintners & Growers Association) the opportunity to examine confidential sales or transactions and use tax records for the purpose of forming a Wine Improvement/Heritage District in Monterey County.

The Monterey County Vintners and Growers Association (MCVGA) was established in 1974 and was developed to promote, protect, and enhance Monterey Wine Country and our wines, grapes, vintners, growers, and community.

Civitas Advisors (Civitas) is a full-service firm specializing in sustainable funding solutions. They provide non-profit and legal consulting services, legislative support and help with all things district-related, specifically renewals and formations. Civitas has also assisted several organizations with Wine Improvement/Heritage Districts.

What is sales or transaction and use tax?

Retailers engaged in business in California must register with the California Department of Tax and Fee Administration (CDTFA) and pay the state's sales tax, which applies to all retail sales of goods and merchandise except those sales specifically exempted by law. The use tax generally applies to the storage, use, or other consumption in California of goods purchased from retailers in transactions not

subject to the sales tax. Use tax may also apply to purchases shipped to a California consumer from another state, including purchases made by mail order, telephone, or Internet.

Who is allowed to access this data and how can it be used?

Divulging of Information by Consultants Hired by Local Governments. Section 7056 provides that information may be released to local government agencies and to private persons contracting with local government agencies under certain conditions and subject to certain qualifications. Section 7056 specifically provides in paragraph (b)(1)(B) that a private consultant shall disclose information contained or derived from sales or transactions and use tax records "only to an officer or employee of the county, city and county, city, or district who is authorized to examine the information." A private consultant may not disclose confidential information to an attorney who is retained by it as an independent contractor to provide legal services and is not an employee of the person identified by resolution.

What does a Wine Improvement/Heritage District do?

Wine Improvement/Heritage Districts can have many functions, all of which are aimed at increasing business activity. The operations of a Wine Improvement/Heritage District are determined by the businesses funding the district. Wine Improvement/Heritage Districts' activities can include print and internet advertising, special event sponsorship, sales efforts, and many other programs that benefit the businesses within the district.

How is a Wine Improvement/Heritage District Funded?

Wine Improvement/Heritage Districts are funded through an assessment placed on businesses within the district. The amount of the assessment is determined by the business owners at the formation of the district, within particular legal guidelines. The assessment may be based on tastes provided or sales made at tasting rooms. Funds raised through the assessment must be spent within the district for the benefit of the businesses paying the assessment. Funds raised through the Wine Improvement/Heritage District cannot be diverted to government programs.

Who manages a Wine Improvement/Heritage District?

An existing non-profit corporation (such as a vintner's association) can manage district funds, or a new nonprofit corporation can be formed to fill this role. The businesses forming the Wine Improvement/Heritage District decide how the corporation will be structured and who will manage it.

Proposed Project Description: The Monterey County Vintners and Growers Association (MCVGA) is working in conjunction with Civitas to potentially review the County sales or transaction and use tax confidential data to assist with determining the viability for a Wine Heritage/Improvement District.

This request would be the first phase in a multi-phase project to determine if the amount of sales or transactions and use tax generated would warrant the development of a Wine Improvement/Heritage District. After conducting outreach and meeting with the Auditor-Controller, Treasurer-Tax Collector, and California Department of Tax and Fee Administration (CDTFA) staff has identified additional steps that would need to be completed in order to grant Civitas access to Monterey County confidential business sales or transactions and use tax records related and limited to Wine Industry.

Please see below:

1. The County would need to enter into an agreement with Civitas and Monterey County Vintners and Growers Association (MCVGA) to perform specific work for the County.
2. Draft a Resolution and Agreement for Civitas to review County sales or transaction use tax data.
3. The County would need to provide the Agreement and Resolution between the County, Civitas and MCVGA for approval to the CDTFA.
4. A scope of work (scope of services*), payment (financed by MCVGA), term, and County insurance requirements would need to be provided from MCVGA to County staff and approved by the Board of Supervisors and submitted to the CDTFA.
5. Monterey County Vintners and Growers Association would need to provide support letters from all City jurisdictions.
6. Once all approved, then Auditor-Controller can authorize an excel export of all winery accounts to Civitas.

Estimated Project Cost: The examination of sales or transaction use tax records is not anticipated to have immediate costs to the County. Should the county enter into an agreement with Civitas and MCVGA it may result in unanticipated costs.

Staff Time: An estimate of 10-15 hours of staff time has currently been utilized for this board referral and should the project move forward additional staff time would be required for an extended period.

Departmental Challenges: The Auditor-Controller's vendor for sales or transaction and use tax data is Hinderliter, de Llamas & Associates (HdL). HdL has advised that sales tax information that will be summarized in their reporting for the winery group will not be consistent between taxpayers. Some taxpayers will have included use tax paid on equipment purchases when the seller is out of state and did not assess the tax at the time of the sale. In many instances, taxpayer's rollup the reporting of the winery with tasting room(s). Only if a tasting room has a permit issued for its address would the tasting room tax be segregated, but in some instances the taxpayer may assign an arbitrary tax amount to each of its locations by assigning a fixed percentage to the CDTFA for use in splitting all taxes reported. Should this project move forward, and a Wine Heritage/Improvement District were to be created there is currently no vehicle for collection of the assessment. Should the project reach this point the Treasurer-Tax Collector recommends that the collection and disbursement of the assessment be handled outside of the County utilizing a private vendor hired by the Wine Heritage/Improvement District.

In connecting with the CDFTA it has been identified that a service agreement including a scope of work, payment, term, insurance, and all necessary exhibits would need to be developed between the County, Civitas and MCVGA to move this project forward. This will require additional staff time and potential costs for the County.

Should MCVGA be interested in moving forward, an agreement for services with Civitas and the County of Monterey including a scope of work (scope of services*) provided by MCVGA, payment (financed by MCVGA), term of the agreement, insurance, and all additional exhibits would need to be provided to County staff and approved by the Board of Supervisors to meet the requirements of

CDTFA. These documents would need to be provided to the CDTFA for approval.

*Scope of services (provided by MCVGA) is to include - Full project detail including specific work to be completed, payment terms, start/end date of the project, fulfillment of county insurance requirements, and additional exhibits pertaining to resolution(s), agreement(s), and a written plan for the formation of a Wine Improvement/Heritage District.

Proposed Response Date: Depending on Board direction, staff proposes a response back to the Board in July 2024.

OTHER AGENCY INVOLVEMENT:

Staff has consulted with County Counsel, Auditor-Controller, and the Treasurer-Tax Collector.

FINANCING:

There is no immediate fiscal impacts associated with the recommended actions.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The opportunity for the County of Monterey to participate in the development of a Wine Improvement/Heritage District led by Monterey County Vintners and Growers Association supports the Board approved strategic initiatives.

Mark a check to the related Board of Supervisors Strategic Initiatives

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Richard Vaughn, Economic Development Manager, ext. 5602

Approved by: Deborah Paolinelli, Assistant County Administrative Officer, ext. 5508

DocuSigned by:
Deborah Paolinelli
DFCFE819B75E478...

Attachments:

- Board Referral
- PowerPoint
- Introduction to Wine and Ag Heritage Districts
- County of Mendocino Example
- County of Riverside Example
- Letters of Support