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REPORT TO COUNCIL

SUBJECT

Action on Presentation from the City on the Audit by TAP International titled “City of Santa Clara Tourism Improvement District - Governance, Internal Controls and Oversight Needed”

BACKGROUND

In accordance with actions required by state law, the City Council established the Tourism Improvement District (TID) by adoption of Ordinance 1797 in January 2005 to fund activities such as marketing campaigns to attract additional travelers with a focus of booking hotel rooms, tourists, cultural groups, and conventions; print ads in travel publications; outdoor advertising campaign; and fund administrative costs of the program. A TID Advisory Board was also established, at that time, representing the nine participating hotels. The TID Advisory Board prepared Bylaws for the TID.

TAP International was hired by the City to conduct a Performance Audit on the Santa Clara Convention Center (SCCC) and Convention-Visitors Bureau (CVB). As part of the initial data gathering for the Audit, TAP noted that the Santa Clara Chamber of Commerce (Chamber) administered all funds for the TID Advisory Board, in accordance with the TID Bylaws designating the Chamber as the an authorized representative to receive and disburse TID funds as provided for in the TID annual budget. As such, given that the CVB Audit was underway and TID funding had been found to be used for staff bonuses/commissions, TAP International suggested, and the Council approved, an audit of the TID. As the party responsible by the TID Bylaws for fiscal receipt and disbursement of TID funds, the Chamber essentially served as the “Fiscal Agent,” where it acted on behalf of another party (City and TID Advisory Board) for performing various financial duties, including the employment of employees to implement the annual program, budget, and independent financial audits.

Based on this recommendation on August 28, 2018, Council approved an Amended and Restated

Agreement with TAP International to include the financial audit of the TID examining the following questions:

1. Have the hotels participating in the TID accurately remitted TID revenue to the City for FY15/16, and FY16/17?
2. Are the expenses of the TID consistent with TID bylaws and policies since FY12/13?
3. What is the nature and extent of any outstanding bills and payables, if any, that have not yet been recorded in the TID's financial system.

As a separate but related matter, staff advised Council on July 16, 2018, that the legal procedures required for the TID to properly levy a $1.00 per room night fee had not been followed. The public hearing on the August 28, 2018 Council agenda brought the TID back into compliance with State law effective September 1, 2018.

DISCUSSION

This report transmits the Auditor's findings of the above referenced Audit (Attachment 1), summarizes the Audit findings, and provides a staff response to the Audit recommendations and findings.

As a standard audit practice, in late October/early November, the Auditor provided the City, Chamber, and TID Advisory Board with the preliminary audit for review of facts and misstatements and allowed the City, Chamber and TID Advisory Board to provide comments regarding the draft for the Auditor's consideration. Since the Council commissioned the audit, by its own motion and direction, the Auditor will present the report and audit findings to the Council during the November 27, 2018 Council meeting.

On November 12, 2018 the Chamber provided input to the draft Audit that was issued to the City, Chamber, and TID Advisory Board. In in response to a statement by TAP in the draft that records were missing for various expenditures and for the entirety of FY 2014/15, the Chamber later produced an entire fiscal year of missing financial records. As a result, the audit notes a limitation in its review because of the gap in records at the time of the audit. Additional review of FY 2014/15 is needed to fully understand the Chamber's fiscal management of the TID funds, particularly since other documents have still not been produced that would substantiate over $300,000 of expenditures.

Similar to the Convention Center/CVB Audit, the TID audit findings document that the Chamber, as the TID's fiscal agent, mismanaged public funds, did not have appropriate policies in place, and practiced sloppy record keeping. Similarly, the Audit also appropriately confirmed a lack of City oversight, as staff reported in summer 2018. The nature of the audit findings show similar patterns of the Chamber's misuse and mismanagement of public resources as found in the Convention Center/CVB audit and an absence of City oversight and compliance management.

More disturbingly, it appears that the Chamber and/or TID Advisory Board had full knowledge of its financial mismanagement and poor accounting practices of public funds which it did not disclose to the City (Governing Body of the TID). Evidence of documented awareness, within their internal documentation, can be confirmed most recently as of October 25, 2017. Other Management Letters are under review to better determine how long the Chamber and/or TID Advisory Board knew about these deficient fiscal practices that went uncorrected for years. Staff will be requesting additional information related to the Management Letters, and possibly additional Management Letters for past fiscal years, and all related audit papers from fiscal years prior to the audit period. A separate staff report can be produced at a later time.

For example, during review of prior independent financial audit reports that the Chamber had commissioned, the Auditor reviewed the Chamber's FY 2016/17 audited financial statements and Auditor's Management Letter to the TID Advisory Board which had warned that it noted "significant deficiencies" in some internal controls, accounting records frequently could not be located, and supporting receipts for expenditures were not properly maintained by staff (Attachment 2). The Management Letter reinforced the importance that expenditures should have proper supporting documentation and be submitted to substantiate the expenditures. Previous audit recommendations were either partially implemented or not implemented (Pages 26-27 of Attachment 1). Specifically, the October 25, 2017 Management Letter (Chamber Commissioned Independent Financial Audit by Johanson & Yau, Accountancy Corporation) states:

> Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, ***we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies***.
>
> A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Organization's financial statements will not be prevented, or detected and corrected, on a timely basis.
>
> A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet imp01tant enough to merit attention by those charged with governance. ***We consider the deficiencies in Santa Clara Tourism Improvement District's internal control presented on page 2 of this letter to be significant deficiencies***. ***[Emphasis Added***]

While the Chamber has denied adamantly its poor fiscal controls and management of public contracts or funds, the Chamber's own internal documentation by their commissioned professional accountants, to produce independent financial audits of its financial statements, serve as evidence that they were made aware of their "significant deficiencies" with managing public funds (e.g., TID funds). Instead of taking corrective action or working with the City to cure this mismanagement, the Chamber has taken a different route by attempting to discredit TAP International, City staff, and/or assign the City's intent as political motivation. The Chamber should have been more transparent with the City Council, City staff, and public of its own possession of evidence documenting its "significant deficiencies" with respect to financial mismanagement and accounting. This is of serious concern and of significant public interest.

As the fiscal agent, responsible for the financial accounting for the TID, the Chamber was not recently able to locate TID financial records for a 12-month period during the audit review period; all supporting documents associated with $860,795 in expenses that were paid by the Chamber in Fiscal Year 2014/15 were not located until November 15, 2018 after the draft audit report was issued (Page 7 of Attachment 1). Additionally, nearly 78 percent of sampled expense transactions had

internal control exceptions (Page 17 of Attachment 1). For example, nineteen of 68 sampled expense transactions, valued at $308,172, had no supporting documentation including credit card charges (Pages 2 and 17 of Attachment 1) and ten transactions valued at $129,084 was expended without the required signatures.

As noted, neither the Chamber nor TID Advisory Board sought City Council annual approval of its proposed Budget (for public transparency of use of the levied assessments) and/or proper action to continue the assessment. Further, the TID's bylaws indicated that it had been incorporated when in fact it had not. Additionally, the City failed to enforce annual procedures required by both the Chamber and TID Advisory Board to initiate a proposed Budget for the Council's approval and perform required annual actions to continue the levied assessments. As such, the TID did not have collection and spending authority for most of its years; in fact, Fiscal Year 2018/19 is the first year after the establishment of the district that the TID assessment fee charge was formally approved by the City Council and administered in accordance with state law. In spite of TID not having proper authority to collect fees for most years, the TID fees collected were generally accurate.

Further, the Audit found that the Chamber and TID did not adhere to its own discount or subsidies policies, much like the same pattern found in the Convention Center/CVB audit. For example, the TID funded subsidy payments to event sponsors were not consistent with subsidy policies (Page 19 of Attachment 1). Four of the 16 event sponsors received approximately $59,125 in transportation subsidies even though the TID does not have guidelines in place to offer such subsidies (Page 19 of Attachment 1). Five of the nine organizations are repeat subsidy recipients, raising fairness and equity concerns (given that these funds are publicly levied) about the TID program and whether the TID was using levied assessments to attract and expand users (Page 19 of Attachment 1).

City Actions to TID Audit

City staff reviewed the audit, its findings, and recommendations. Staff concurs with the findings and recommendations. The attached matrix (Attachment 3) identifies the recommendations; the current status of implementation classified as "Not Implemented," "Partially Implemented," and "Implemented;" and steps taken so far for complete and partially implemented recommendations and next steps for the remaining recommendations. Staff will provide quarterly updates on the implementation status of the recommendations.

Table 1: Summary of TID Audit Recommendations (November 2018)

Status	Complete	Partially Implemented	Not Implemented	Total
Number of Audit Recommendations	1	1	7	9

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT
There is no fiscal impact associated with the presentation of the audit other than staff time to transmit the report.

COORDINATION
This report has been coordinated with the Finance Department and the City Attorney's Office.

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.

RECOMMENDATION
Action on City Response to Audit titled "City of Santa Clara Tourism Improvement District - Governance, Internal Controls and Oversight Needed"

Reviewed by: Ruth Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS
1. Audit submitted by TAP International
2. Management Letter
3. Staff Response Matrix

TAPInternational

CITY OF SANTA CLARA TOURISM IMPROVEMENT DISTRICT – GOVERNANCE, INTERNAL CONTROLS AND OVERSIGHT NEED ATTENTION

FINAL REPORT

November 19, 2018

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Results in Brief

Why the Audit was Performed

The City of Santa Clara (City) contracted with TAP International, Inc. to examine the financial management of the Santa Clara Tourism Improvement District (TID) because of concerns about the TID's audited financial statements, which were issued with a qualified audit opinion. The TID has been managed by a local non-profit organization since 2005, herein referred to as the TID Administrator. The TID Administrator also served as the City's contractor for the Santa Clara Convention and Visitors Bureau (CVB) and the Santa Clara Convention Center (SCCC).

What was Audited

The audit objectives were to determine: (1) if hotels participating in the TID accurately remitted TID revenue to the City for fiscal year (FY) 2015-16 and FY 2016-17; (2) if expenses of the TID were consistent with TID bylaws and policies between FY 2012-13 and FY 2016-17; and (3) the nature/extent of outstanding bills and payables that have not yet been recorded in the TID's financial system.

What the Audit Found

Although the TID Did Not Have Proper Authority to Collect Fees for Most Years, the TID Fees Collected Were Generally Accurate

The TID, between FY 2005-06 and FY 2017-18, was assessing and collecting fees from hotel guests without proper authority because, following initial inception and authorization in 2005, the assessment fee was not annually approved by the Santa Clara City Council (City Council) as required by State law. Since inception, approximately $8.3 million in TID fees have been collected. All TID assessment fees that were remitted to the TID Administrator by the City were deposited into a bank account owned by the TID administrator's organization, using the organization's own tax identification number. The TID is in the process of filing the necessary documentation with the State of California for incorporation that would allow financial institutions to establish separate bank accounts under the TID's own tax identification number.

This audit examined the accuracy of TID fees assessed and collected by the TID for FY 2015-16 and FY 2016-17. Of the approximately $1.5M in fees collected during this two-year time period, between 98.8 and 99.8 percent of TID fees had been properly remitted to the City. The TID fees that were not collected (known as leakage) is between 0.2 and 1.2 percent, ranging from $2,500 to $17,500 in revenue opportunity had all the hotels uniformly implemented ordinance requirements to charge the $1 assessment fee for all occupied hotel room nights. Had the City conducted compliance and oversight efforts of the City Ordinance at the inception of the TID in 2005, it is estimated the City could have collected approximately between $14,000 and $96,000 in additional fees[1].

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[1] Large range in the estimate is due to a high standard deviation of errors between the hotels and inconsistent methods the hotels used to determine the TID assessment fees owed.

The estimated TID leakage rate was caused by implementation of the City's ordinance that varied among the TID's nine participating hotels at the time of our review. One of these hotels collected and remitted the TID fee assessment in accordance with the City Ordinance. The other hotels variously did not assess a TID fee for government agencies that applied for exemption of the assessment fee and/or did not collect the fee from their patrons who used hotel rooms designated as "complimentary" by the hotel. The different methods of fee assessment occurred because the City did not conduct oversight of the TID to ensure effective compliance with the City's ordinance. Uniform implementation of the City's TID ordnance would provide an opportunity to enhance revenue of about $1,300 to $8,700 per year depending on economic and business conditions for the hotels.

Governance, Accounting and Financial Internal Control Concerns are Present Although TID Spending is Consistent with City Ordinance

Although there was an absence of a formal contract with the TID Administrator to manage the TID, and an absence of spending authority that was not provided by the City Council, the spending by the TID Administrator between FY 2012-13 through FY 2016-17[2] generally aligned with the City's TID ordinance. Our review of the TID's general ledger identified spending on:

- Destination marketing;
- SCCC marketing efforts to attract additional conventions;
- Print ads;
- Advertising; and
- Administration costs.

During this time period, the TID Administrator was under budget an average of $86,000 per year.

TAP International examined 68 expense transactions for their appropriateness, allowability, and implementation of key internal controls, identifying 47 exceptions that can be considered significant deficiencies in internal controls.

- Nineteen expense transactions did not have any supporting documentation to verify the expense totaling about $308,172, including credit card expenses[3].
- Other exceptions included:
    - the lack of two signatories required for checks,
    - errors in posting expenses to incorrect sub-accounts, including insufficient detail to explain individual charges, and
    - checks that were generated prior to approval by both the TID Administrator and the TID President or Treasurer in contrast to the TID Administrator's policy.

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[2] Excluding FY 2014-15 as the supporting documentation for the year was not available during the time of audit fieldwork.

[3] The TID Administrator reports that it was not given the opportunity to find documentation; however, the TID Administrator was aware of the missing documentation on November 6, 2018. Internal controls for financial management call for accounting records to be available for inspection and review upon request. An audit recommendation was directed to the City to review the records should the documentation become available.

How other expenses were managed was also problematic. The TID provides subsidies to selected event sponsors and to the SCCC for reimbursement of facility and lodging costs. Our analysis found that:

- Some subsidies were posted as transportation subsidies because the TID Administrator did not create sub-accounts in the financial system, which has since been corrected by the new TID accountant.
- Although $418,172 in transportation subsidies were provided between FY 2012-13 and FY 2016-17, there is no transportation subsidy guideline governing their issuance.
- All sixteen awarded subsidies that we reviewed could not be accurately reconciled against the TID subsidy guidelines.
- The TID Administrator explained that the subsidies to the respective recipients speaks to the high level of repeat business. However, the TID subsidy guidelines do not include "repeat business' as a criterion for award; the absence of public transparency on the availability of the subsidies, and the concentration of subsidies ($170,682 out of $222,833, between July 2018 and July 2021) awarded to five event sponsors shows that not all event sponsors may have the same access to subsidies available to them (i.e. equity), and the City does not guarantee due process in awarding of the public funds (i.e. fairness).

TID Has Some Outstanding Bills

Because the TID Administrator records expenses upon their payment, TAP International reviewed outstanding bills owed by the TID. As of September 21, 2018, the TID has $132,642 in outstanding bills. The TID checking and savings account balances were $567,978 as of September 20, 2018 and are sufficient to pay these expenses. The funds available in the savings and checking accounts do not include approximately $201,884 in assessment fees for April through June of 2018 that the City has yet to remit to the TID.

Other Issues Noted

- TID Administrator has not effectively implemented key TID bylaws that we reviewed.
- Prior audit issues with the TID have not been resolved.

Recommendations

1. The City Manager should work with the City Attorney to determine how to address the improper collection of TID fees since FY 2005-06.
2. The City Attorney should conduct research to determine if the TID should cease or continue efforts to incorporate.
3. The City Manager should work with the TID Advisory Board to update the TID bylaws with particular attention paid to procedures for budget preparation and approval, recordkeeping requirements, allowable expenses, implementation of subsidies, policies and procedures to establish proper oversight of cash accounts, and conducting at least yearly board meetings with minutes prepared in sufficient detail to document discussion points, decisions and commitments.

4. The City Manager should develop and implement guidance and training for the TID's participating hotels on the City's TID ordinance and how the assessment fee should be calculated.
5. The City Manager should consider the feasibility of having the TID managed by City staff or contracting the management of the TID to a third party. If the City decides to contract with a third party, the contract should include all City required insurance coverages, performance expectations and reporting requirements for audited financial statements of the TID and related management letters.[4]
6. As the expense documentation for FY 2014-15 was found after the completion of audit fieldwork, the City Manager should decide if further work is warranted to review the expenses from that year for allowability, appropriateness and implementation of internal controls.
7. Upon the submission of appropriate documentation within a reasonable time period to support $308,172 in expenses missing during audit fieldwork, the City Manager should audit available records and based on the audit results, make any needed adjustment to the amount owed.
8. The City Manager should establish a contract manager to administer oversight of TID operations. Oversight activities should include periodic TID assessment fee audits, internal control audits and compliance audits.
9. The City Manager should consider working with the TID to update the subsidy program into a grant program that is open to all event sponsors to apply for public funds to offset the cost of events contracted at the SCCC.
10. The City Manager should determine whether to conduct a TID assessment fee audit of the one participating hotel that could not provide requested sample testing documentation regarding hotel occupancy for this audit due to illness.

Background Section

Background

In California, TIDs may be formed pursuant to Part 6, entitled "Parking and Business Improvement Area Law of 1989" (89 Act), of Division 18 of the California Streets and Highways Code (SHC). This Act allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. TIDs may also be formed by similar enabling ordinance by a charter city like the City of Santa Clara.[5] The City's Ordinance 1797 that creates the TID does not address whether

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[4] This recommendation was made to provide the option for contracting with a third party, regardless of whom that third party is. Presently, there is no formal contract for TID administration services. The current TID Administrator raised the issue that this report omits stating that over $8M of public funds were remitted without a contract or City Council approval. However, the report states in Section 2, page 11, that the "TID Administrator Assumed TID Operations without a Formal Contract." This report also states on page 1, the TID was assessing and collecting fees without proper authority. The authority would come from the City through Council approval.

[5] The City enabling ordinance for the TID does not require a third party to manage TID funds.

the City can manage and operate its own TID or whether the City is required to contract out operations to a third party.

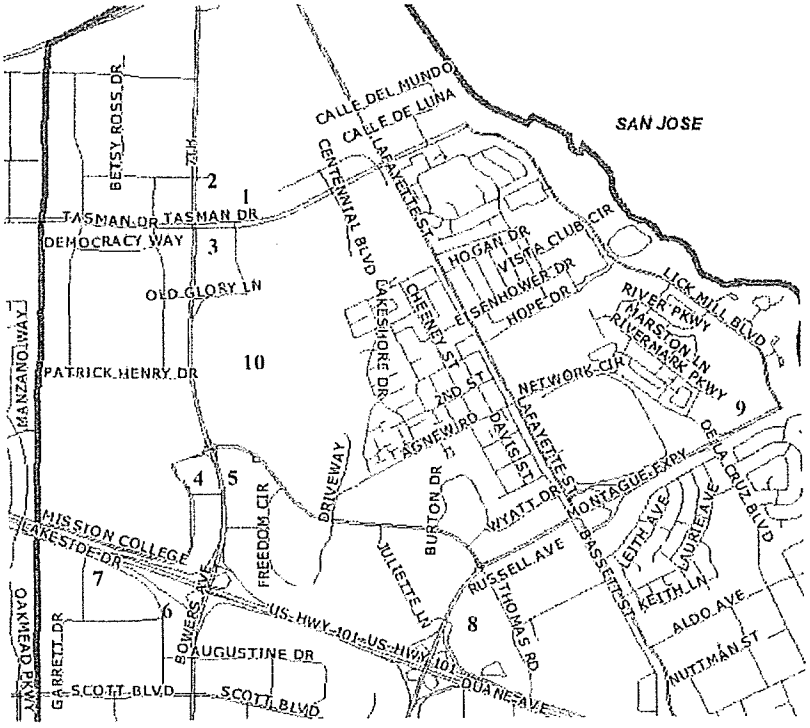
The key difference between TIDs formed under the 89 Act and other special benefit assessment districts is that funds raised may be returned to the private non-profit corporation under contract with the district to administer and implement the activities and improvements as specified in the TID budget. Assessment proceeds collected by a TID are public funds that are earmarked for a specific purpose.

The City's TID was established in January 2005 to use funds from the TID to create programs to promote tourism in the City. Per the City Ordinance 1797, the TID aims to sponsor an aggressive and colorful marketing campaign to attract additional travelers, tourists, and conventions. The funds from the TID are generated through a formula developed by the TID Committee. The assessment fee is based on a payment of $1.00 per room per occupied night for all hotel properties located within the boundaries established in Figure 1.

Figure 1: Santa Clara Tourism Improvement District Boundaries

MAP OF PROPOSED DISTRICT (CITY SOURCE)

1	Santa Clara Convention Center	5001 Great America Parkway
2	Westin Hotel	5101 Great America Parkway
3	Hilton	4949 Great America Parkway
4	Holiday Inn	4200 Great America Parkway
5	Santa Clara Marriott	2700 Mission College Boulevard
6	Embassy Suites	2885 Lakeside Drive
7	The Plaza Suites	3100 Lakeside Drive
8	The Biltmore	2151 Laurelwood Road
9	Sierra Suites	3915 Rivermark Plaza
10	Great America Theme Park	#1 Great America Parkway



As part of the Advisory Board's duties, an annual report must be presented for City Council review and approval prior to the beginning of each fiscal year. The annual report needs to comply with a provision regarding public notice and hearing prior to establishment of the benefit assessments for the following fiscal year. The submission of the TID's budget is a mandated part of the annual report.

The TID Administrator charged the TID $30,000 annually in management fees in addition to salaries, wages, taxes, incentives, benefits and overhead costs for CVB employees who provided support services to the TID.

Objectives

The City contracted with TAP International to address the following questions under this performance audit:

1. Have the hotels participating in the TID accurately remitted TID assessment fee revenue to the City for FY 2015-16 and FY 2016-17?
2. Are the expenses of the TID consistent with TID bylaws and policies since FY 2012-13?
3. What is the nature/extent of outstanding bills and payables that have not yet been recorded in the TID's financial system?

Scope

- TAP International focused audit efforts among the nine hotels currently participating in the TID and the management entity responsible for TID operations.
- The areas audited included financial management and administration.

Methodology

To determine whether hotels participating in the TID accurately remitted TID revenue to the City, TAP International reviewed remittance documents from the City, TID assessment fee reports from participating hotels, TID exemption forms, and the hotels' occupied room night reports. The time period of this analysis was FY 2015-16 through FY 2016-17. One of the nine TID hotels did not provide occupancy data to assess the accuracy of the TID fees collected because of illness of a staff member.

TAP International interviewed TID and participating hotel officials in order to understand how each hotel assesses, collects, and remits TID fees. We also compared TID revenue remitted to the City with TID assessment fee collection reports from the participating hotels. Each of the hotels' methods for collecting TID assessment fees were compared with guidance published in City Resolution 7176 and City Ordinance 1797.

To determine whether TID generated expenses were consistent with TID bylaws and policies, TAP International reviewed TID budgets, TID check registers, TID financial transaction data and performed analysis that categorized the types of expenditures incurred and reported under the TID. TAP International also performed statistical tests to identify and select financial transaction data to compare against original source documentation. Where data was available, TAP International examined 68 transactions for the allowability and appropriateness of the expense,

for application of proper internal controls governing review and authorization of the expenses, and determined whether the expense was accurately captured in the TID's general ledger. The results were summarized and discussed later in this report. The period of this analysis was from FY 2012-13 to FY 2016-17, except for FY 2014-15.

FY 2014-15 was excluded from this audit because all supporting documents associated with $860,795 in expenses that were paid by the TID Administrator were missing during the time of audit fieldwork. The documentation was eventually found on November 15, 2018, soon after issuance of the draft report. This timing did not permit sufficient time to include the review of the transactions in this audit. While the TID Administrator reported that its external financial auditor found that its expenses were appropriate, there was no means to verify that the third party's work examined the allowability and appropriateness of the expenses per City Ordinance. This report includes a recommendation to the City Manager to separately audit FY 2014-15 expenses for allowability, appropriateness, and implementation of other internal controls. The TID Administrator could not explain the initial lack of availability of the FY 2014-15 financial records, other than that they were misplaced and subsequently found.

To determine the nature and extent of outstanding bills and payables that have not yet been recorded in the TID's financial system, TAP International collected information on all outstanding invoices that were not yet posted in the TID's general ledger and analyzed and summarized the data. TAP International also compared the total amount of outstanding payables due by the TID against current cash available.

TAP International interviewed the TID Treasurer and President, City management, and staff from the TID Administrator.

Limitations of the Review

Some sampled expense data from fiscal years other than FY 2014-15 was also not available. The TID Administrator could not definitively explain the whereabouts of the records; these occurrences were identified as audit exceptions in this report.

CVB employees who provided management support activities for the TID through FY 2017-18 were not available for interviews due to structural changes implemented by the TID Administrator's organization regarding the CVB.[6] Other personnel responsible for TID administration were also not available due to resignations.

A draft report was provided to the TID Advisory Board President and Treasurer, the TID Administrator, and the City Manager's Office for review and comment. All applicable comments were incorporated into the report.

We conducted this performance audit from August 2018 to November 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and

[6] The organization serving as the TID Administrator terminated the employees of CVB who performed work for the TID. The organization's President/CEO explained that the CVB employees were not available due to the City not renewing the CVB contract with its organization. The organization opted to terminate employment of the CVB employees despite a June 2018 City decision to provide funds to the TID Administrator for the sole purpose of funding salaries and specific related costs for up to 60 days.

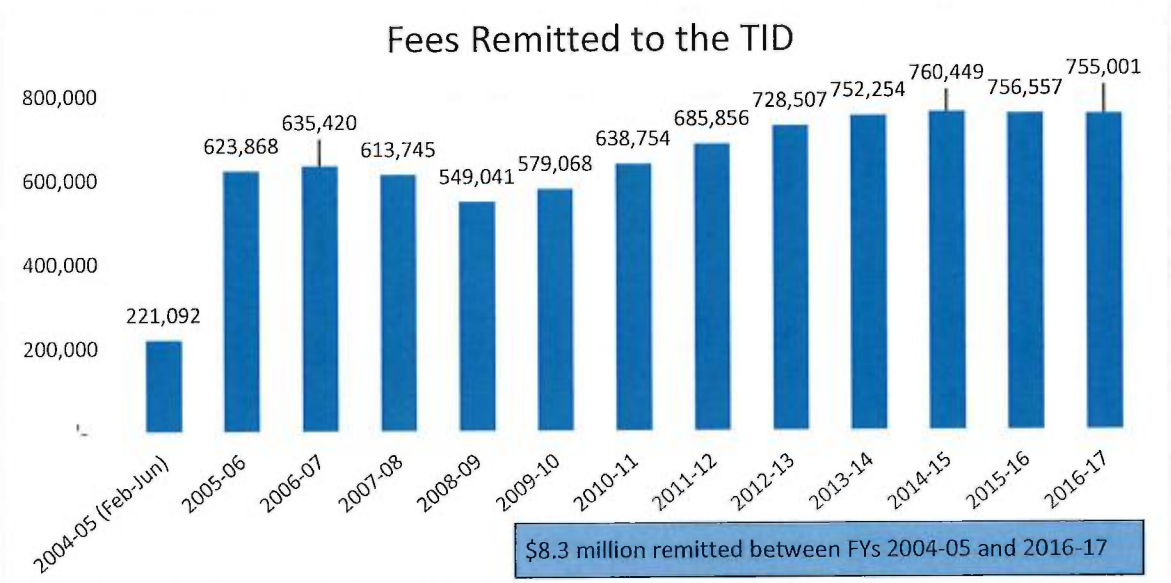
perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Section 1: Although the TID Did Not Have Proper Authority to Collect Fees for Most Years, the Fees Collected Were Generally Accurate

TID Assessment Fee Did Not Receive Proper Approval by the City Council After Initial Inception Until FY 2018-19

When hotel guests lodge at participating hotels within the TID, the hotels should assess fees of $1.00 per occupied room night to hotel guests. The fee is collected by the hotels and then remitted to the City. The City then remits the fees, less an administration fee of $3,000 per year, to the TID, who use the funds to support economic stimulation and business enhancement. Since inception in FY 2004-05, the City has remitted almost $8.3M in benefit fees to the TID[7], as shown in Figure 2.[8]

Figure 2: TID Assessment Fees Collected by Fiscal Year



Source of Data: TID Annual Reports

All TID assessment fees that were remitted to the TID Administrator by the City were deposited into a bank account owned by the TID administrator's organization, using the organization's own tax identification number and separated in the TID Administrator's accounting system by a general ledger identifier. The TID is in the process of filing the necessary documentation with the State of California for incorporation that would allow financial institutions to establish separate bank accounts under the TID's own tax identification number.

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[7] Per the TID Annual Reports.

[8] The TID Administrator raised the need for an audit recommendation to identify other public funds collected without compliance to public law. However, there is no evidence submitted by the TID Administrator of other funds improperly collected to support such a recommendation, or to support describing the issue as needing further review.

State law requires the City Council to annually renew the TID assessment fee by City Council Resolution, after it has reviewed and approved the TID annual report. The TID was formed under the 1989 State law authorizing TIDs, which requires the annual renewal of the assessment.[9] Based on available archived City Council meeting agendas and supplemental documentation, the City Council had approved the fee in the TID's first year of operations and had not formally renewed the TID assessment annually, as required by State law. Reversing this trend, in August 2018, the City Council formally approved the TID assessment for the next fiscal year. Without annual approval of the assessment fee, the hotels do not have formal authority to assess and collect the fee. The City historically did not perform oversight activities of TID operations to ensure City compliance with its own ordinance until the current City management identified the need for annual approval of the assessment fee and suspended the collection of fees effective July 1, 2018 until proper authority was provided by the City Council in August 2018.

Both the TID Advisory Board representatives and the TID Administrator reported they were unaware of the requirement of the annual approval for the assessment fee by the City Council and explained that City officials had never questioned the requirement until June.

Notwithstanding Governance Concerns, the Accuracy of TID Assessment Fees Collected and Remitted to the City Varied Among Hotels

Our review of the accuracy and completeness of the nine hotels' collection of the assessment fees found that implementation of the City Ordinance 1797 varied. One hotel had accurately remitted the fee assessment to the City. This hotel correctly applied the assessment fee formula requirements and collected $61,792 in TID fees from hotel guests who utilized 61,792 room nights between FY 2015-16 to FY 2016-17.

Another seven hotels were nearly accurate in TID fees remitted to the City as follows:

- Two of these hotels underpaid TID fees because government agencies requiring lodging were not charged the assessment fee.
- Three other hotels also underpaid TID fees because these hotels did not assess a fee for guests using complementary room nights.
- Another two hotels did not assess the fees for both government agency rooms and complementary rooms.

The remaining one hotel did not submit information to assess the accuracy of the TID fees collected because of employee illness.

Overall, the nine hotels were approximately 99.4 percent (+-0.5%) accurate in their submittals collecting $1,517,569 in TID fees from hotel guests between FY 2015-16 to FY 2016-17. Hotel officials generally explained that they applied the TID assessment in the same manner as the transient occupancy tax (TOT), so that organizations that are eligible for TOT exemptions were also (incorrectly) exempted from the TID assessment fee. TOT taxes are generally assessed as a

[9] Cities may also form a TID under the 1994 State law, which does not require annual renewal of the assessment during the life of a district management plan. The TID did not include preparation of a district management plan.

percentage of revenue collected for each room charged lodging fees versus an occupied room night.

Based on our sample testing of TID assessment fees covering two fiscal years (2015-16 and 2016-17) the City could have collected between $2,500 and $17,500 in additional fees (referred to as leakage) had all the hotels uniformly implemented the ordinance requirements. Since the TID's inception, the City could have possibly collected between $14,000 and $96,000 in additional fees.

Section 2: Governance, Accounting and Financial Internal Control Concerns are Present although TID Spending is Consistent with City Ordinance

TID Administrator Assumed TID Operations without a Formal Contract

The TID Administrator does not have a formal contract with the City that outlines the full scope of services expected and the related fees. An agreement for the operations of the CVB for FY 2017-18 (CVB Agreement) between the City and a local nonprofit organization (Contractor), who also serves as the TID Administrator, stated that the Contractor was to manage certain aspects of the TID operations through the CVB. The CVB agreement required the Contractor to (1) manage TID advertising in lieu of an ad agency; and specified that (2) advertisements and trade shows in FY 2017-18 will be partially paid by the TID. Although a separate contract was not in place, the TID Administrator managed TID operations. TID Advisory Board members confirmed that because the formation of the TID was led by the current TID Administrator, the TID Administrator assumed operations. The TID Administrator had developed budgets, oversaw the spending of the TID funds, completed external financial audits in accordance with the TID bylaws, and coordinated annual meetings of the TID Advisory Board. The City acknowledged the TID Administrator's role in managing TID operations by remitting the TID fees to them. Upon acceptance of public funds remitted to the TID Administrator by the City, the TID Administrator has a responsibility to ensure the public funds are spent in accordance with the City Ordinance and TID bylaws. Without a formal contract, however, the TID Administrator did not have the City required insurance coverages for related operations or other requirements in place to guide operational accountability.

City TID Ordinance Requires a Budget to Govern Spending

The City's Ordinance 1797 (Section 16.10.1220) that establishes the TID contains a requirement for submission to the City of an annual report of the TID.[10] The annual report is to contain a budget describing the expenditure of TID revenues for the next fiscal year.

Article VII Finances, Section 4: Budget, of the TID bylaws states that the TID Advisory Board will be presented an annual budget for approval. This is a misstatement in the bylaws. Under state and local requirements[11], the TID Advisory Board does not have the authority to unilaterally approve the annual TID budget although Advisory Board can recommend approval to the City Council. City Council approval of the budget provides proper spending authority of public funds for programs and services as well as for entities such as the TID. The budget approval process ensures that the elected officials perform their fiduciary and oversight responsibility to ensure that proposed spending is consistent with the bylaws of the TID.

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[10] Also required in SHC, Div. 18, Part 6, Chapter 3, Section 36533

[11] SHC, Div. 18, Part 6, Chapter 3, Section 36530 and TID Ordinance Sec. 16.10.1220

The TID bylaws assign responsibility for compilation of the budget, by name, to a local nonprofit organization who serves as administrator/management of the TID. The bylaws do not explicitly assign responsibility to either the TID Advisory Board or the TID Administrator for presentation of the budget to the City Council. Based on available archived City Council meeting agendas and supplemental documentation, the City, for the past 13 fiscal years[12], did not approve an annual budget until August 2018 when the City Council formally approved the TID's budget for FY 2018-19. Prior to this, the City did not implement proper budget oversight to ensure that the TID Administrator submit the annual budget for the TID.

Figure 3, below, describes the state and local requirements for the TID annual report and budget process

Figure 3. Roles & Responsibilities for Development and Approval of the TID Annual Report & Budget According to State Law, Local Ordinance and TID Advisory Board Bylaws

Contractor: *Santa Clara Chamber of Commerce & Convention - Visitors Bureau*	TID Advisory Board	City of Santa Clara Mayor & City Council
State Law • Does not require a "budget" but says the annual report must contain, among other things, a description of the improvements and activities for the fiscal year and the estimated cost of providing those activities. "an advisory board shall make a recommendation to the city council on the expenditure of revenues derived from the levy of assessments..." (36530)	**State Law** • The Advisory Board shall make a recommendation to the City Council on the expenditure of revenues derived from the levy of assessments. State law requires an annual report, which includes the identification of the "improvements and activities" for that fiscal year and an estimate of the cost of providing those services, as well as any surpluses or deficits from the prior year. (SHC, Div. 18, Part 6, Chapter 3, Sections 36530 and 36533 (a))	**State law** • Requires the City Council to review, modify and approve the annual report presented by the TID Advisory Board, prior to adopting a separate resolution of intention to levy an annual assessment for that fiscal year and the expenditures of the funds collected according to the description of planned activities in the annual report. (Section 36534)
City of Santa Clara Ordinance • Submission of the annual TID budget is a mandated component of the TID annual report (Section 16.10.1220)	**City of Santa Clara Ordinance** • Decisions regarding the expenditures of funds (Section 16.10.1230) will be made in accordance with the applicable state laws.	**City of Santa Clara Ordinance** • Decisions regarding the expenditures of funds (Section 16.10.1230) will be made in accordance with the applicable state laws.

[12] FY 005-06 to FY 2017-18

TID Bylaws	TID Bylaws	TID Bylaws
• Compile a TID budget of estimated expenses and income for the upcoming year and prior to the beginning of the fiscal year. • Present it to the TID Advisory Board for approval. (Auditor Note: Advisory Board does not have authority to approve the budget but can make a recommendation to approve the budget.)	• The Contractor (SCC & CVB) will present the budget to the TID Advisory Board for approval.	• Does not address. The TID bylaws do not state what happens to the budget after it is submitted to the TID Advisory Board for approval, nor who shall submit the budget to the City Council for approval. The bylaws do state that funds may not be disbursed until after the budget is "approved" but does not say who must approve it first. (Article VII, Section 1: FUNDS)

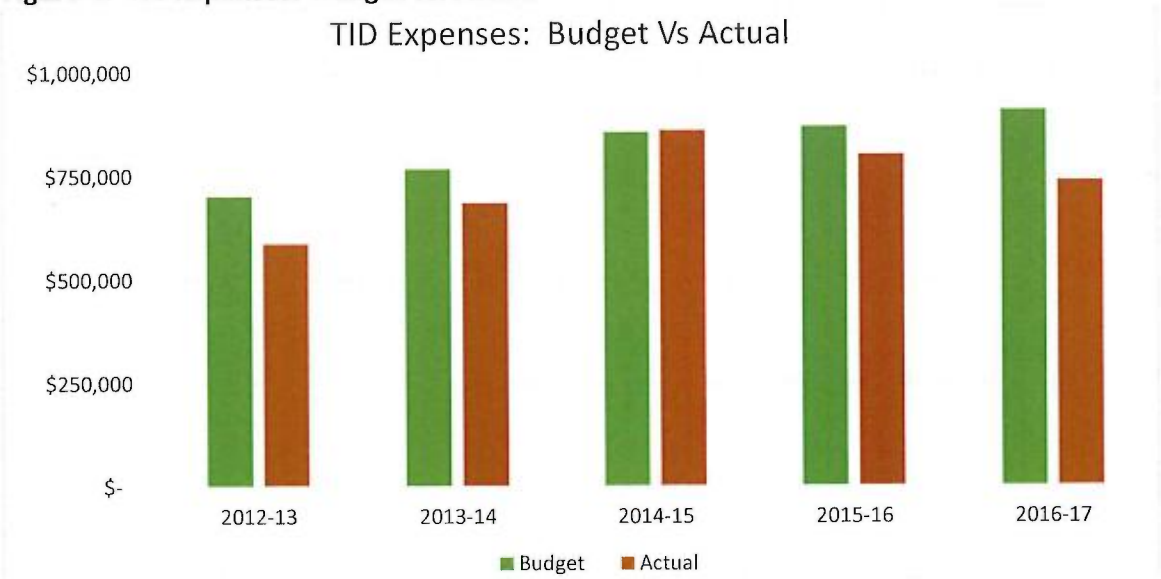
Source of Data: TAP International, Inc. analysis

Despite Absence of a Contract and Proper Spending Authority, TID Expenditures Align with Types of Expenditures Allowed Under State Law and City Ordinance

TID spending was analyzed using three methods of analysis: (1) budget vs. actual analysis; (2) review of spending against TID ordinance requirements; and (3) review of selected transactions.

The budget versus actual analysis showed that the TID spending was within the TID budget despite the absence of the spending authority for most years. As shown in Figure 4 below, the TID from FY 2012-13 through FY 2016-17 was underbudget four of the five years, totaling about $431,000 across the five years. The TID Administrator staff explained that the TID budget was used to supplement the budget gaps of the CVB.

Figure 4: TID Expenses: Budget vs. Actual



Source of Data: TAP International, Inc. analysis based on TID Audited Financial Statements.

The activities for which the TID has spent, or plans to spend money, generally align with the focus areas identified in recent TID annual reports (FY 2015-16 and FY 2017-18) as well the FY 2018-19 budget and the 2005 enabling Ordinance. The Ordinance states that the identified activities are only a partial list of the "types of improvements and activities" that could be provided by the TID (Section 16.10.1160 Purpose and Use of Benefit Assessments). Figure 5 compares the alignment of the seven areas of potential activities identified in the 2005 Ordinance to actual and proposed spending. The annual financial statements reflect the categorization of TID expenses that were spent in prior fiscal years and the budget shows what activities the TID plans to spend its monies.

Figure 5. Comparison of Areas for TID activities in Ordinance, Annual Reports, and Audited Financial Statements.

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(1) Sponsorship of an aggressive and colorful marketing campaign developed to **attract additional travelers and tourists.**	• Market and sell the TID as an overnight destination. (#1) • Through the Internet, publicize weekend hotel packages for individual consumers and families. (#9) • Update Santa Clara destination videos, including TID hotel content. (#5)	Leisure Marketing & Advertising Internet Marketing	Leisure Advertising Internet Marketing
(2) Sponsorship of aggressive marketing efforts to attract additional conventions.	• Enhance the City's position as a viable meeting, convention, and leisure destination and improve the overall awareness and perception of the destination. (#2) • Increase hotel occupancy and utilization of the SCCC. (#3)	Direct Sales (Trade Shows) Advertising: Conference Media Other subsidies	Trade Shows Conference Media

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(3) Possibly sponsor the services of consulting firm to prepare a **Travel/Tourism Marketing Study and Plan** for the purpose of determining where to focus marketing funds and what market(s) to target as well as what specific marketing programs might be most effective.	• Provide research funding to keep current with marketing trends and to monitor overall performance of the TID. (#8)	Research	Research
(4) Possibly sponsor **print ads** in Sunset, Via and other similar **travel publications.**	• Direct sales effort specifically targeting, sports and city-wide groups, short term business, weekend and holiday need period business and leisure, along with a variety of weekend packages and holiday packages. (#4)	Leisure Marketing & Advertising	Leisure Advertising
(5) Possibly sponsor a creative and colorful **outdoor advertising campaign.**	• Unable to determine.	Unable to determine	Unable to determine
(6) Possibly sponsor a commercial marketing campaign to attract specific **cultural groups.**	• Drive small group and city wide corporate, association, sports and SMERF type "A" business to the City, convention facilities and our Santa Clara hotel properties thru direct sales efforts. (#10)	Direct Sales (incudes Trade Shows) Advertising: Conference Media Operational Expenses & fees (includes subsidy liability)	Trade Shows Conference Media Other subsidies

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(7) Sponsor **administrative costs** of program development and implementation.	• Upgrade technology systems when necessary to compete more effectively. (#6)	Staff Subsidy (includes Compensation and benefits, expenses, membership dues, monthly operating costs, bonus incentive, ADP, workers compensation insurance) Overhead (includes Insurance, Audit fees, SCCC Admin fee, check printing) Operational Expenses & fees (incudes Technology Systems)	Compensation and benefits Administration fee Rent Audit fees Bank fees Administrative meetings

Source of Data: TAP International, Inc. analysis

The review of 68 financial transactions for their appropriateness, allowability, and implementation of key controls found 47 internal control exceptions in addition to the missing documentation from FY 2014-15. Some supporting documents from other fiscal years were also missing (19 transactions, totaling $308,172). Figure 6 below shows the results of the transaction review.

Figure 6: Results of Financial Transaction Review

Number of Transactions	Exception	Transaction Value
19	No supporting documentation, including for credit card charges.	$308,172
10	Insufficient signatory provided.	$129,084

14	Subsidies to event clients that were based on hotel room bookings were posted to a general ledger account for Travel Subsidies rather than a more accurate name such as client event subsidies.	$172,002
4	Four sample transactions included payments for Leisure Advertising within the reimbursement for CVB employee salaries and benefits. No supporting documentation was provided for these advertising payments.	$5,520

Source: TAP International, Inc. analysis

Our review identified other comparable issues. For example:

- For FY 2016-17, incentive payments totaling $1,950 could not be reconciled between the general ledger and the CVB incentive payment worksheets that detail incentive pay computation. For FY 2012-13 to FY 2015-16 incentive payments totaling $116,382 could not be reconciled because of the documentation detailing incentive pay computation was not available at the time of our review.
- Expenses shown on invoices received from law firms were incorrectly posted as incentive payments. The FY 2013-14 general ledger showed two legal firm payments reported under bonus and incentive payments. These transactions were not within our sample selection so are not included in the previous table.
- Checks were generated prior to receiving proper approval for the expense for most all sampled transactions because the process was redundant. TID Administrator staff explained that because a packet comprised of the invoice, check request form, and check for payment is submitted to the TID Board Treasurer all at once, and given the check payment had already been created and signed by the TID Administrator, it was not necessary to have the check requests signed. The TID Administrator executive management further explained that the TID Advisory Board approved the budgets and a TID authorized signer signed each check, including authorizing expenses and reviewed each payment. However, our analysis determined that this process was not fully effective because checks were generated without prior TID Advisory Board approval, checks were sometimes not signed by both the authorized TID Administrator and TID Advisory Board President or Treasurer, and specific expense detail was often not present to determine the allowability of the expense.

The absence of consistent application of internal controls does not provide the City or the TID Advisory Board assurance that expenses were appropriately authorized, reviewed, and paid as allowable.

Subsidies Could Not Be Reconciled

Between FYs 2012-13 and 2016-17, the TID provided approximately $418,172 to event sponsors and the SCCC using public funds, in the form of subsidies, when event sponsors met or exceeded hotel lodging levels. The event sponsors would receive reimbursement from $2 to $6 per room

night, as shown in Figure 7. Since July 2018, there were four subsidies provided to event sponsors and another 12 planned for event sponsors contracted to use the SCCC through 2021. The TID Advisory Board members explained that the subsidies allow the CVB to encourage potential event sponsors to host events at the SCCC and use TID hotels.

Figure 7: TID Subsidy Policy

Subsidy Rate	Number of TID Hotels Used	Number of Peak Room Nights Used
$2	2	300
$4	2	400
$6	3	500

Source of data: SCCC Booking Policies and Procedures.

The audit identified the following exceptions:

- None of the 16 event subsidies provided and planned could be reconciled to subsidy policies. The CVB sales managers would determine, through negotiations with the potential clients, the amount of subsidies needed. If the subsidies needed exceeded the standard TID subsidy policy, the sales manager would need to request additional subsidies from the TID Advisory Board. E-mail records between the CVB and the TID Advisory Board that could aid in reconciliation were not available for review because the CVB employees were recently terminated by the City's Contractor that had managed the CVB.
- Four of the 16 events received $59,125 in transportation subsidies even though the TID does not have guidance in place offering this type of subsidy.
- Five of the nine organizations that have received or are planned to receive subsidies have received multiple subsidies, raising public fairness and equity concerns about the TID program. In other TIDs, such as City of Napa Tourism Improvement District and the County of Sonoma Tourism Improvement District, grant programs were established so that all event sponsors have the opportunity to apply for public funding based on specific eligibility criteria. The TID Administrator explained that the subsidies to the respective event sponsors speak to the high level of repeat business. However, TID subsidy guidelines do not include "repeat business" as a criterion for award and the absence of public transparency about the availability of the subsidies, and the concentration of subsidies ($170,682 of $222,833, or 77%) awarded to five of nine event sponsors shows that not all event sponsors may have the same access to subsidies made available to them (i.e. equity), and guarantee of due process in awarding of subsidies (i.e. fairness).

Figure 8 on the following page shows the CVB incentive worksheet of current and future events.

Figure 8: CVB Incentive Worksheet

Meeting Name **********	Meeting Start	Meeting End	Contract Room Block Begin	Contract Room Block End	Attendees	Contract Rooms	Contract Peak	Pickup Rooms	Pickup Peak	TID Subsidy Type	TID Subsidy Transportation $2	TID Subsidy Total
Jehovah's Witnesses Convention 2018	07/06/18	07/08/18	07/05/18	07/08/18	5500	1350	450	0	0			$ 16,950.00
Jehovah's Witnesses Convention 2018	07/13/18	07/15/18	07/12/18	07/15/18	5500	1350	450	0	0			$ 16,950.00
National Championship 2018	07/19/18	07/22/18	07/18/18	07/22/18	4000	1815	560	0	0	Other		$ 8,275.00
Jehovah's Witnesses Convention 2018	07/27/18	07/29/18	07/26/18	07/29/18	5500	1095	365	0	0			$ 16,950.00
STITCHES WEST 2019	02/20/19	02/24/19	02/18/19	02/25/19	9000	1700	524	0	0	$6/room	3400	$ 13,600.00
CASL Conference 2019	04/04/19	04/07/19	04/01/19	04/08/19	1000	1856	451	0	0	$2/room		$ 3,712.00
2019 CAEYC Conference & Expo	04/11/19	04/13/19	04/09/19	04/13/19	3000	1270	513	0	0	$6/room	$2,540.00	$ 10,160.00
STITCHES WEST 2020	02/19/20	02/23/20	02/17/20	02/25/20	9000	2354	666	0	0	$6/room	4708	$ 18,832.00
2020 CA DECA Career Development Conference	02/28/20	03/02/20	02/27/20	03/01/20	1800	2599	864	0	0	$6/room	$5,198.00	$ 20,792.00
2020 NCCNA XLII Convention	04/09/20	04/12/20	04/08/20	04/13/20	5000	1927	713	0	0	$6/room		$ 9,300.00
CETPA 2020 Annual Conference	12/02/20	12/05/20	11/30/20	12/05/20	2000	2668	900	0	0	$6/room	$5,640.00	$ 22,560.00
STITCHES WEST 2021	02/17/21	02/21/21	02/15/21	02/21/21	7000	2259	645	0	0	$6/room	4518	$ 18,072.00
2021 CA DECA Career Development Conference	03/05/21	03/08/21	03/04/21	03/07/21	1800	2599	864	0	0	$6/room	$5,198.00	$ 20,792.00
CASL Conference 2021	04/08/21	04/11/21	04/05/21	04/12/21	1000	1856	451	0	0	$2/room		$ 3,712.00
2021 CAEYC Conference & Expo	04/15/21	04/17/21	04/13/20	04/17/21	3000	1270	513	0	0	$6/room	2540	$ 10,160.00
2021 Annual Convention	07/04/21	07/11/21	06/24/21	07/13/21	1000	3004	450	0	0	$4/room		$ 12,016.00

Source of Data: Santa Clara Convention Center, the entity responsible for the payment of subsidies.

Section 3: TID Has Some Outstanding Bills

The TID uses a cash basis of accounting, meaning that revenue and expenses are accounted for upon payment and receipt rather than when earnings and expenses are incurred. The external financial auditor for the TID noted that the TID's cash basis of accounting represents a departure from generally accepted accounting principles (GAAP)[13]. The purpose of GAAP is to ensure that financial reporting is transparent. Government entities must follow a set of GAAP standards as determined by the Governmental Accounting Standards Board (GASB).

Under a cash basis of accounting, outstanding bills will not be recorded in any financial report until the bills are paid. Concerns would exist if there were multiple invoices that were not yet paid over a long period of time. Our analysis showed that outstanding bills totaled about $132,642 as of September 21, 2018. All of the outstanding bills to the TID were for reimbursement of expenses that were previously paid by the SCCC or CVB. The TID accounting manager explained that the marketing and convention center expenses would normally have been paid directly from a TID checking account (created under the TID Administrator's tax identification number), but because the TID accounts were frozen by the City, the SCCC and CVB had paid the expenses and subsequently have billed the TID. The expense for employee wages, benefits, and taxes are normally paid by the CVB, then invoiced monthly to the TID for reimbursement.

The TID checking and savings account balances of $567,978 as of September 20, 2018 are sufficient to pay the outstanding payables shown in Figure 9. This balance does not include approximately $201,884 in TID assessment fees for April to June 2018 that the City has collected but has not yet remitted to the TID.

Figure 9: Outstanding expenses, Tourism Improvement District as of September 20, 2018

Date	Payee	Amount	No. of Days Outstanding (as of 9/21/18)	Nature of Expense	Description
8/28/2018	Santa Clara Convention Center	$645.00	24	Overhead	Renewal for QuickBooks Online subscription. Initially paid by SCCC employee, who was reimbursed by the SCCC, who then billed the TID.

[13] Per TID Audited Financial Statements and Independent Auditors' Reports

5/27/2018	KGO-TV	$3,690.00	117	Marketing	Charge for social media video distributed via ABC7News.com and ABC7Social.com. This expense was paid by the CVB and billed to the TID.
8/28/2018	SC Chamber/CVB	$61,091.98[14]	24	Operational	Reimbursement of employee benefits, taxes, wages
8/28/2018	SC Chamber/CVB	$6,427.97	24	Operational	American Express Credit Charges, June 2018
8/28/2018	SC Chamber/CVB	$335.86	24	Operational	Mastercard charges, June 2018
8/28/2018	SC Chamber/CVB	$601.36	24	Operational	Employee expense reimbursements
7/31/2018	Santa Clara Convention Center	$50,850	52	Subsidy Payment	Subsidy for Christian Congregation of Jehovah's Witnesses Convention (3 separate events)
9/21/2018	Destination Advantage	$9,000	0	Marketing	Internet marketing services
TOTAL		**$ 132,642.17**			

Source of Data: Santa Clara Convention Center

[14] Includes: employee salaries, taxes and 401(k) for June to August 2018, employee bonuses for quarter ending June 2018 and benefits for July to August 2018.

Section 4: Other Issues

TID Administrator Has Not Effectively Implemented TID Bylaws

During the course of our activities to address the audit objectives, TAP International identified significant issues applicable to the TID bylaws. These bylaws describe the basic governance and management activities of the TID. As shown in Figure 10, of five selected bylaw established in 2009:

- One was in the process of implementation at the time of our review
- Another was in partial compliance regarding holding and documenting annual meetings.
- Two bylaws were not implemented and one of them was improperly stated
- One bylaw was partially implemented although the bylaw was improperly stated

The TID Administrator questioned whether it had responsibility for implementing the TID bylaws and explained that it was the responsibility of the TID board itself to implement the bylaws. Basic governance tenants call for a board to have responsibility for ensuring that the managing body have implemented requirements in accordance with governing documents. Although no formal contract had been implemented between the TID Advisory Board and the organization serving as the TID Administrator, or between the TID Administrator and the City, the TID Administrator was implementing key aspects of TID operations, from budgeting, spending, implementing TID guidelines, and ensuring implementation of third party financial audits. In addition, when the TID Administrator accepted public funds from the City, the organization had a responsibility to implement and comply with the TID's governing documents.

Figure 10: TID Compliance Issues Identified by TAP International, Inc.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article I, Section 1:	TID is incorporated	**In Process.** Bylaws are misstated. The TID has not been incorporated. Only recently has the TID Advisory Board begun process of incorporating the TID with the State of California.	TID fees were deposited into the TID Administrator's core organization's bank accounts.	The City did not conduct oversight to ensure incorporation occurred or whether incorporation was needed.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article III, Section 1:	An annual meeting of the TID Advisory Board should be held.	**Partial compliance.** TID Advisory Board reported that meetings were held, but there was no documentation of meeting agendas or meeting minutes.	Absence of governance.	Absence of effective governance by the TID Administrator.
Article IV, Section 4:	TID has an agreement with the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau to manage the TID program.	**Not implemented and improperly stated.** TID has no contractual authority to enter into an agreement with the Chamber or CVB.	Misstatement of bylaws has led to misinformation among TID Administrator employees.	The City did not conduct oversight of the TID. TID Administrator did not follow up to ensure that an agreement was prepared.
Article VII, Section 1:	Funds unused from the current year's budget will be placed in a reserve account. Monies allotted to subsidies will be placed in a money market account.	**Not implemented**. Funds remaining from the prior year budget were not regularly transferred to a reserve account and funds used for subsidies were drawn from the same account that was used for operating expenditures.	Funds were not separated for transparency and ease of identification of use.	The TID Advisory Board and Administrator were not aware of this requirement.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article VII, Section 4:	TID budget is to be presented to the TID Advisory Board for approval.	**Partially Implemented, and Improperly stated.** TID Advisory Board is an advisory board and should not have budget approval authority. It can provide a recommendation for the City Council to approve the budget.	City Council was not provided the budget for approval as required by the City Ordnance.	TID Administrator was unaware of State law and City Ordinance requirements.

Source: TAP International, Inc. analysis

Prior Audit Issues for the TID Have Not Been Resolved

As required by generally accepted government auditing standards, a review of prior audit reports[15] is necessary in planning and conducting audits. As shown in Figure 11, our review of the FY 2016-17 audited financial statements and the related management letter to the TID Advisory Board and the Management of the TID identified that:

- Two of the five audit recommendations made by the external auditor were not yet implemented.
- One recommendation was partially implemented.
- One recommendation was in progress at the time of our review.
- One recommendation is no longer applicable to the TID.

We were not able to determine if the recommendations were made in prior year end audits as not all management letters were available through the TID Administrator.

[15] Santa Clara Tourism Improvement District Financial Statements and Independent Auditor's Reports for FY 2012-13 to FY 2016-17.

Figure 11: Status of Prior TID Audit Issues

Issue Identified	FY 2016-17 External Auditor Recommendation	Status
Record Storage and Retrieval	Accounting records frequently could not be located when needed. The TID Administrator informed the external auditor that procedures were implemented.	**Not Implemented.** Accounting records were not available to TAP International for FY 2014-15. Some transaction files were missing from the other in-scope years. No new policies and procedures had been developed.
Support for Cash Disbursement Needed	Santa Clara Tourism Improvement District should require that supporting receipts be submitted for all charges for which it is practical to obtain a receipt and that the business purpose of the expense be clearly documented and a formal policy be adopted that prohibits the personal use of business credit cards and requires sufficient supporting documentation for all charges.	**Not implemented.** TID Advisory Board members are not aware that credit card policies and procedures have been prepared.
Bank Account Access Capabilities	The Board should contact Key Point to update authorized users and remove inactive persons timely, to avoid any unplanned account activity.	**In Progress** The TID Advisory Board reported that bank account updates will occur by November 9, 2018.
Documentation and Maintenance of Critical Information	A written agreement should be prepared and signed between the Tourism Improvement District and the Santa Clara Convention Center to perform all services necessary to direct, manage, and supervise the operations of the District as of September 2016. The agreement should name the parties involved, list the item of the services, and identify the fees.	**Not applicable.** The TID does not have contractual authority to enter into the agreement.

Issue Identified	FY 2016-17 External Auditor Recommendation	Status
Board Meetings	Santa Clara Tourism Improvement District should have at least one annual meeting of the Board of Directors. Discussion minutes of the meeting should be taken to clearly document all decisions made and approved by the Board. The minutes should also be retained as evidence of the meeting and related actions.	**Partially implemented.** TID Advisory Meetings reported that meetings were held, but there was not documentation of meeting agendas or meeting minutes.

Source: TAP International, Inc. analysis of TID Audited Financial Statements

Title: TID Management Letter FY 2017
Source: Nick Kaspar, SC Chamber of Commerce CEO
Date: 10/25/2018
Prepared by: G Matayoshi, TAP International
Purpose: To document the TID's financial audit management letter

JOHANSON & YAU
ACCOUNTANCY CORPORATION

DAVID R. DAVIS
FREDERICK U. LEONARD
SHERYL L. HINSHAW
BYRON J. ISHIWATA
SARA E. KELLEY

ANTHONY S. C. YAU
Of Counsel

To the Board of Directors and Management of

Santa Clara Tourism Improvement District

Santa Clara, California

In planning and performing our audit of the financial statements of Santa Clara Tourism Improvement District as of and for the year ended June 30, 2017, in accordance with auditing standards generally accepted in the United States of America, we considered Santa Clara Tourism Improvement District's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Organization's financial statements will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies in Santa Clara Tourism Improvement District's internal control presented on page 2 of this letter to be significant deficiencies.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the Organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

Johanson & Yau
Accountancy Corporation

San Jose, California

October 25, 2017

CERTIFIED PUBLIC ACCOUNTANTS
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CITIES AROUND THE WORLD

Communication of Internal Control Related Matters Identified in the Audit
Year Ended June 30, 2017

Significant Deficiencies

1) Record Storage and Retrieval

During our audit we noticed that accounting records frequently could not be located when needed. The causes of the problem were numerous:

- Lack of a clearly specified system for filing records
- Failure of those who removed records from the files to indicate who took the record
- Failure to return the record to the files or misfiling it when it was returned

The result was that employees spent nonproductive time searching for needed documents. We have been informed that procedures have been implemented subsequent to yearend to address this issue.

2) Support for Cash Disbursement Needed

During our audit we noticed that certain expenses were charged to credit cards belonging to the Santa Clara Chamber of Commerce, which the Santa Clara Tourism Improvement District subsequently reimbursed to the Santa Clara Chamber of Commerce. Employees were required to prepare expense reports to be turned in to the accounting department on a monthly basis, however, it was determined that several receipts and other supporting documentation for charges were not properly maintained. This practice could result in the payment of unsubstantiated expenses.

We recommend that Santa Clara Tourism Improvement District require that supporting receipts be submitted for all charges for which it is practical to obtain a receipt and that the business purpose of the expense be clearly documented and a formal policy be adopted that prohibits the personal use of business credit cards and requires sufficient supporting documentation for all charges.

3) Bank Account Access Capabilities

During our audit we noticed that personnel who are no longer involved with the District still have access to the bank account with KeyPoint Credit Union. We recommend that the Board to contact KeyPoint to update authorized users and remove inactive persons timely, to avoid any unplanned account activity.

4) Documentation and Maintenance of Critical Information

During our audit we noted that the Santa Clara Tourism Improvement District began paying the Santa Clara Convention Center to perform all services necessary to direct, manage and supervise the operations of the District as of September 1, 2016; however, there was no formal agreement maintained by either party documenting the agreed-upon terms. In order to protect Santa Clara Tourism Improvement District and to eliminate potential problems that can arise from oral agreements, we recommend that a written agreement be prepared and signed. The agreement should name the parties involved, and list the terms of the services and the fees.

5) Board Meetings

We noted during out audit that no minutes of board meetings were available because the Santa Clara Tourism Improvement District has not had a Board meeting in the past two years. Board meetings can be crucial in documenting compliance with accounting and other regulatory issues. It is strongly recommended that Santa Clara Tourism Improvement District has at least an annual meeting of the Board of Directors. Discussion minutes of the meeting should be taken to clearly document all decisions made and approved by the Board. The minutes should also be retained as evidence of the meeting and related actions.

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

TAP INTERNATIONAL AUDIT OF THE TOURISM IMPROVEMENT DISTRICT

(11/20/2018)

	Audit Recommendation	Current Status	Action Taken
1	The City Manager should work with the City Attorney to determine how to address the improper collection of TID fees since FY 2005-06.	Complete	As documented in the audit, for some years TID revenues exceeded expenditures. These prior year surplus funds were placed in the TID Reserve which holds approximately $600,000. On August 28, the Council approved the TID assessment for Fiscal Year 2018/19. As part of this report, staff advised the Council that previous years' TID funds were collected without following the appropriate steps as outlined by State law. Therefore, the reserves funds must be preserved for one year from the date of the proper levy of the assessment. Once the one year has elapsed, the funds can be released for use.
2	City Attorney should conduct research to determine if the TID should cease or continue efforts to incorporate.	Not Implemented	The City Attorney will review the recommendation and determine if the TID should cease or continue efforts to incorporate.
3	The City Manager should work with the TID Advisory Board to update the TID bylaws with particular attention paid to procedures for budget preparation and approval, recordkeeping requirements, allowable expenses, implementation of subsidies, policies and procedures to establish proper oversight of cash accounts, and conducting at least yearly board meetings with minutes prepared in sufficient detail to document discussion points, decisions and commitments.	Not Implemented	The City Manager has already reached out to coordinate with the TID Advisory Board and they invited the City Manager, or designee, to attend TID Advisory Board meetings. The City Manager has already attended one meeting and has requested the TID Advisory Board's meeting schedule. The City Manager will discuss this recommendation with the TID Board at an upcoming Board meeting.
4	The City Manager should develop and implement guidance and training for the TID's participating hotels on the City's TID ordinance and how the assessment fee should be calculated.	Not Implemented	See item 3.
5	The City Manager should consider the feasibility of having the TID managed by City staff or contracting the management of the TID to a third party. If the City decides to contract with a third party, the contract should include all City required insurance coverages, performance expectations and reporting requirements for audited financial statements of the TID and related management letters	Not Implemented	Staff will review the feasibility of this recommendation.
6	As the expense documentation for FY 2014-15 was found after the completion of audit fieldwork, the City Manager should decide if further work is warranted to review the expenses from that year for allowability, appropriateness and implementation of internal controls.	Not Implemented	Staff will amend TAP International's contract for a review of the FY 2014/15 expenses. Based on this additional work, staff will determine if any amount is owed to the City.

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

	Audit Recommendation	Current Status	Action Taken
7	Upon the submission of appropriate documentation within a reasonable time period to support $308,172 in expenses missing during audit fieldwork, the City Manager should audit available records and based on the audit results, make any needed adjustment to the amount owed.	Not Implemented	Staff will issue a letter to the Chamber of Commerce seeking appropriate documentation to support $308,172 in expenses missing during the audit fieldwork and will amend the contract with TAP International to audit any newly made available records. Based on this additional work, staff will make adjustments to the amount owed.
8	The City Manager should establish a contract manager to administer oversight of TID operations. Oversight activities should include periodic TID assessment fee audits, internal control audits and compliance audits.	Partially Implemented	At the September 18, 2018 City Council Meeting, the City Council approved the addition of 1.0 Assistant To The City Manager position to serve among other duties also as a contract manager for the TID. The recruitment for this position is currently underway.
9	The City should consider working with the TID to update the subsidy program into a grant program that is open to all event sponsors to apply for public funds to offset the cost of events contracted at the SCCC.	Not Implemented	See item 3.
10	The City Manager should determine whether to conduct a TID assessment fee audit of the one participating hotel that could not provide requested sample testing documentation regarding hotel occupancy for this audit due to illness.	Not Implemented	Staff will review amending the contract with TAP International for this additional TID assessment fee audit.

11/27/18

item 7A&C

City Council

Item #7 (A. B. and C.) Tourism Improvement District Audit

November 27, 2018

City of Santa Clara
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Agenda

- TID Background and Governance
- TAP International's TID Audit Presentation
- Chamber and/or TID's Advisory Board Response
- City Response

POST MEETING MATERIAL

City of Santa Clara
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TID Background

- Established in January 2005 through Council action
- Assessment proceeds collected by a TID are public funds that are earmarked for a specific purpose.
- Requires annual Council approval of assessment
- TID aims to attract additional travelers, tourists, and conventions

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TID Governance

City Council
Governing Body

Authorized per State Law

TID
Advisory Board

- Established per City Ordinance
- Advisory on Council approved TID goals

Chamber
Fiscal Agent

Manages public funds per TID's Bylaws

City of Santa Clara
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Presentation of TAP International Audit

"City of Santa Clara Tourism Improvement District – Governance, Internal Controls and Oversight Need Attention"

City of Santa Clara Tourism Improvement District: Governance, Internal Controls and Oversight Need Attention

November 27, 2018

TAPInternational

AUDIT OBJECTIVE 1: HAVE THE HOTELS PARTICIPATING IN THE TID ACCURATELY REMITTED TID REVENUE TO THE CITY FOR FY 15-16, AND FY 16-17?

Fees Collected Were Generally Accurate

- Since FY 2004-05, the City has remitted almost $8.3M in benefit fees to the TID.
- The collection accuracy rate of TID fees was between 98.8 and 99.8 percent between FY 2015-16 to FY 2016-17.
- Not all of the required TID fees were collected because the 9 hotels participating in the TID at the time of our review varied in the implementation of the City's ordinance regarding the TID fee assessment.

Fees Collected Were Generally Accurate

- One hotel applied the ordinance correctly, charging hotel patrons $1 per occupied room night.
- Another seven hotels did not implement the TID fee assessment correctly because they either did not charge the fee to patrons lodging under government rate, and/or lodging in a complimentary hotel room.
- The remaining hotel could not be audited because they did not submit information.
- Had all of the hotel followed the City ordinance correctly, between $14,000 and $96,000 in additional fees could have been collected by the TID hotels since FY 2004-05.

TID Did Not Have Proper Authority to Collect Fees for Most Years

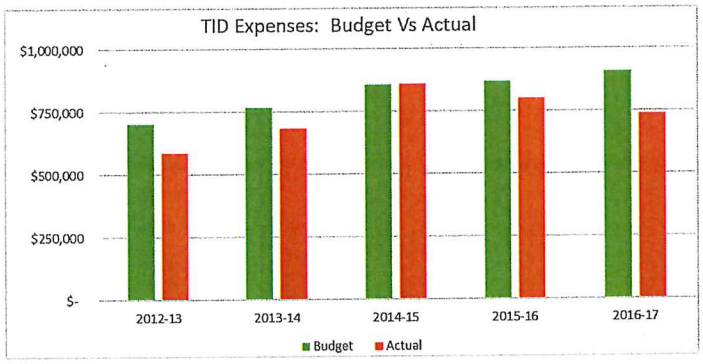
- The fees that were collected by the hotels happened without formal authority and approval by the City to assess and collect the fee.
- State law requires the City Council to annually renew the TID assessment fee.
- The City Council had approved the fee in the TID's first year of operations , but had not done so until this year because the City historically did not perform oversight activities of TID operations to ensure City compliance with its own ordinance until the current City management identified the need for annual approval of the assessment fee.

AUDIT OBJECTIVE 2: ARE THE EXPENSES OF THE TID CONSISTENT WITH TID BYLAWS AND POLICIES BETWEEN FY 12-13 AND FY 16-17?

TID Spending was Generally within Budget

TID spending was analyzed using three methods of analysis: (1) budget vs. actual analysis; (2) review of spending against TID ordinance requirements; and (3) review of selected transactions.

The TID Administrator was under budget in its spending an average of $86,000 per year.



TID Expenditures Align with Types of Expenditures Allowed

TID Spending was Aligned with City Ordinance.
Funds were generally spent on:

1. Attracting additional travelers and tourists
2. Marketing efforts to attract additional conventions
3. Travel/Tourism Marketing Study and Plan
4. Print ads in Sunset, Via and other similar travel publications.
5. Advertising campaign
6. Commercial marketing campaign to attract specific cultural groups
7. Administration

Spending Review – Internal Control Exceptions Identified

- Review of 68 sampled expense transactions found 47 internal control exceptions.

Number of Transactions	Exception	Transaction Value
19	No supporting documentation, including for credit card charges.	$308,172
10	Insufficient signatory provided.	$129,084
14	Subsidies to event clients that were based on hotel room bookings were posted to a general ledger account for Travel Subsidies rather than a more accurate name such as client event subsidies.	$172,002
4	Four sample transactions included payments for Leisure Advertising within the reimbursement for CVB employee salaries and benefits. No supporting documentation was provided for these advertising payments.	$5,520

Other Spending Exceptions Identified

- Subsidies provided to event sponsors could not be reconciled.
  - None of the 16 event subsidies provided and planned could be reconciled to subsidy policies.
  - Four of the 16 events received $59,125 in transportation subsidies even though the TID does not have guidance in place offering this type of subsidy.
  - The concentration of subsidies ($170,682 of $222,833, or 77%) awarded to five of nine event sponsors shows that not all event sponsors may have the same access to subsidies made available to them (i.e. equity), and guarantee of due process in awarding of subsidies (i.e. fairness).

OBJECTIVE 3: WHAT IS THE NATURE/EXTENT OF OUTSTANDING BILLS AND PAYABLES THAT HAVE NOT YET BEEN RECORDED IN THE TID'S FINANCIAL SYSTEM?

TID Has Some Outstanding Bills

September 2018 TID account balance: $567,978

Date	Payee	Amount	No. of Days Outstanding (as of 9/21/18)	Nature of Expense	Description
8/28/18	SCCC	$645.00	24	Overhead	Renewal for QuickBooks Online subscription.
5/27/18	KGO-TV	$3,690.00	117	Marketing	Charge for social media video distributed via ABC7News.com and ABC7Social.com.
8/28/18	SC Chamber/CVB	$61,091.98	24	Operational	Reimbursement of employee benefits, taxes, wages
8/28/18	SC Chamber/CVB	$6,427.97	24	Operational	American Express Credit Charges, June 2018
8/28/18	SC Chamber/CVB	$335.86	24	Operational	Mastercard charges, June 2018
8/28/18	SC Chamber/CVB	$601.36	24	Operational	Employee expense reimbursements
7/31/18	SCCC	$50,850	52	Subsidy Payment	Subsidy for Christian Congregation of Jehovah's Witnesses Convention (3 separate events)
9/21/18	Destination Advantage	$9,000	0	Marketing	Internet marketing services
TOTAL		**$ 132,642.17**			

OTHER ISSUES IDENTIFIED

TID Administrator Had Not Effectively Implemented TID Bylaws

Of five bylaws reviewed:

- The TID Administrator did not document when annual meetings were held or their results.
- Funds unused from the current year's budget were not placed in a reserve account as required.
- An Agreement between TID and the SCCC was not executed.
- Bylaws were misstated regarding the TID being incorporated and the TID Advisory Board approving the budget.

Prior Audit Issues for the TID Have Not Been Resolved

- Two of five audit recommendations were not implemented (Record storage/retrieval, support for expenses)
- One recommendation was partially implemented. (Board meeting documentation)
- One recommendation was in progress (Bank account access)
- One recommendation is no longer applicable to the TID. (Written agreement between the TID and the SCCC)

Recommendations

10 audit recommendations:

- 5 Governance related
- 4 Oversight
- 1 Internal Controls

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Chamber and/or TID Advisory Board Response to Audit

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City Response to Audit

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Pattern of Mismanagement

TID Audit Finds Similar Issues as Found in the Santa Clara Convention Center & Convention Visitors' Bureau Audit:

- Lack of City Oversight
- Mismanagement of public funds
- Lack of policies and adherence to existing policies
- Poor record keeping
- Weak Internal Controls

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City's Mismanagement

- TID Assessments are public (not private) funds
- TID must meet legal requirements for public funds: assessment, collection, and expenditure
- TID budget and assessment must be approved annually by Council
- Expenditures must be transparent and fair

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Need for Updated Policies

- Governance
- Collection of funds
- Management of funds (e.g., cash management and bank accounts)
- Appropriateness of expenditures
- Subsidy or grants for events
- Record keeping

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Fiscal Agent's Poor Record Keeping

Fiscal Agent responsible for proper expenditure of public funds, record keeping, and compliance with applicable laws and policies

- No records available for an entire FY 2014/15 during the audit period despite numerous requests
- Lack of documentation on expenditures totaling over $300,000
- Records lost or damaged
- Charges posted to the wrong expenditure categories

"Significant Deficiencies" Known to Fiscal Agent

- Chamber Commissioned Independent Audit for TID Financial Statements
- Johanson & Yau found "significant deficiencies" in internal controls. Audit Report dated: October 25, 2017
- No disclosure to the City at time.

Source: Nick Kaspar, SC Chamber of Commerce CEO
Date: 10/25/2018
Prepared by: G Matayoshi, TAP International
Purpose: To document the TID's financial audit management letter

JOHANSON & YAU
ACCOUNTANCY CORPORATION

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Of Counsel

To the Board of Directors and Management of
Santa Clara Tourism Improvement District
Santa Clara, California

In planning and performing our audit of the financial statements of Santa Clara Tourism Improvement District as of and for the year ended June 30, 2017, in accordance with auditing standards generally accepted in the United States of America, we considered Santa Clara Tourism Improvement District's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

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This communication is intended solely for the information and use of management, the Board of Directors, and others within the Organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

Johanson & Yau
Accountancy Corporation

San Jose, California
October 25, 2017

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Internal Control Deficiencies

- ***Significant Deficiency:*** **"a deficiency, or combination of deficiencies, in internal control that** is less severe than a material weakness, yet important enough to **merit attention by those charged with governance"**
- The City Council, not the Chamber or TID Advisory Board, is the governing body of the TID. Its authority allows for the TID to: levy assessments, establish a budget, expend funds per budget, and advance mission.

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Significant Deficiencies
(Johanson & Yau Audit 10/25/2017)

- Record Storage and Retrieval
- Support for Cash Disbursement Needed
- Bank Account Access Capabilities
- Documentation and Maintenance of Critical Information
- TID Board Meetings – none for two years

City of Santa Clara
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TAP Audit Recommendations

- Staff concurs with all audit recommendations

Summary of TID Audit Recommendations

Status	Complete	Partially Implemented	Not Implemented	Total
Number of Audit Recommendations	1	1	8	10

- Implementation matrix developed

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Recommendations Currently "Not Implemented"

- 5 Recommendations relate to governance, policies and work with TID Advisory Board for the future (#2, #3, #4, #5 and #9)
- 3 Recommendations relate to further audit/financial work:
  - Audit of FY14/15 (#6)
  - Supporting documentation for $308,172 (#7)
  - TID Assessment Fee audit for 1 hotel (#10)

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Recommendation

1. Note and File Reports 7A, 7B and/or 7C
2. Authorize staff to pursue an audit of FY 14/15
3. Direct staff to obtain legitimate and complete set of supporting documentation or reimbursement of funds
4. Direct staff to not release any TID funds to Chamber
5. Direct staff to immediately obtain in its possession the TID Reserve, approximately $600,000
6. Direct staff to continue working with TID Advisory Board, or alternate body on TID governance-related issues, toward corrective action
7. Explore TID oversight allocation for City's oversight of TID funds
8. Any other action determined by the Council to implement audit findings

18-1582 **Agenda Date: 11/27/2018**

SUPPLEMENTAL REPORT TO COUNCIL

SUBJECT
Supplemental Report to Items 7.A and 7.C (#18-1166 and #18-1371) TAP International, Inc. Audit Titled "City of Santa Tourism Improvement District - Governance, Internal Controls and Oversight Need Attention"

BACKGROUND AND DISCUSSION
Pursuant to Brown Act requirements, the November 27, 2018 City Council agenda was publicly available on November 21, 2018.

On November 26, 2018, TAP International submitted an amended report which simplifies the descriptive statistics presented in the report and adding the phrase "TID Administrator" in the areas describing responsibility. The audit titled "City of Santa Tourism Improvement District - Governance, Internal controls and Oversight Need Attention" was attached to Items 7.A and 7.C (#18-1166 and #18-1371). This Supplemental transmits the amended report.

In addition, there was a clerical error on Table 1: Summary of TID Audit Recommendations (November 2018) in the report for Item 7.C. The updated table below corrects the number of audit recommendations and its respective status consistent with the Audit Response Matrix (Attachment 2 of Item 7.C).

Table 1: Summary of TID Audit Recommendations (November 2018)

Status	Complete	Partially Implemented	Not Implemented	Total
Number of Audit Recommendations	1	1	8	10

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(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT
There is no fiscal impact associated with this item.

COORDINATION
This Supplemental Report has been coordinated with the City Attorney's Office.

POST MEETING MATERIAL

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. Amended TID Audit - dated November 26, 2018

TAPInternational

TRAINING | ANALYTICS | PERFORMANCE
3436 American River Drive, Suite 9A
Sacramento, CA 95864
PH: 916.333.3401
www.tapinternational.org

November 26, 2018

Deanna J. Santana
City Manager, City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

Dear Ms. Santana,

We are submitting an amended final report to you because our company is committed to issuing performance audit reports that can be easily read and understood by the general public.

In our pursuit of this goal, we identified areas in the prior report that we released to your office that could have been described in a more effective manner by simplifying the descriptive statistics presented in the report, adding the phrase "the TID Administrator" in the area describing responsibility for ensuring fairness and equity in granting subsidy allocations, removing phrases referring to the City's Contractor and other redundant information regarding missing documentation by the TID Administrator.

If you have any questions, please do not hesitate to contact Greg Matayoshi, Lead Consultant, or Denise Callahan, Principal Consultant.

Thank you

Gregory Matayoshi
Lead Consultant
TAP International, Inc.

TAPInternational

CITY OF SANTA CLARA TOURISM IMPROVEMENT DISTRICT – GOVERNANCE, INTERNAL CONTROLS AND OVERSIGHT NEED ATTENTION

FINAL REPORT

Amended November 26, 2018

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Results in Brief

Why the Audit was Performed

The City of Santa Clara (City) contracted with TAP International, Inc. to examine the financial management of the Santa Clara Tourism Improvement District (TID) because of concerns about the TID's audited financial statements, which were issued with a qualified audit opinion. The TID has been managed by a local non-profit organization since 2005, herein referred to as the TID Administrator.

What was Audited

The audit objectives were to determine: (1) if hotels participating in the TID accurately remitted TID revenue to the City for fiscal year (FY) 2015-16 and FY 2016-17; (2) if expenses of the TID were consistent with TID bylaws and policies between FY 2012-13 and FY 2016-17; and (3) the nature/extent of outstanding bills and payables that have not yet been recorded in the TID's financial system.

What the Audit Found

Although the TID Did Not Have Proper Authority to Collect Fees for Most Years, the TID Fees Collected Were Generally Accurate

The TID, between FY 2005-06 and FY 2017-18, was assessing and collecting fees from hotel guests without proper authority because, following initial inception and authorization in 2005, the assessment fee was not annually approved by the Santa Clara City Council (City Council) as required by State law. Since inception, approximately $8.3 million in TID fees have been collected. All TID assessment fees that were remitted to the TID Administrator by the City were deposited into a bank account owned by the TID administrator's organization, using the organization's own tax identification number. The TID is in the process of filing the necessary documentation with the State of California for incorporation that would allow financial institutions to establish separate bank accounts under the TID's own tax identification number.

This audit examined the accuracy of TID fees assessed and collected by the TID for FY 2015-16 and FY 2016-17. Of the approximately $1.5M in fees collected during this two-year time period, between 98.8 and 99.8 percent of TID fees had been properly remitted to the City. The TID fees that were not collected (known as leakage) ranged from $2,500 to $17,500 in revenue opportunity had all the hotels uniformly implemented ordinance requirements to charge the $1 assessment fee for all occupied hotel room nights for FY 2015-16 to FY 2016-17. Had the City conducted compliance and oversight efforts of the City Ordinance at the inception of the TID in 2005, it is estimated the City could have collected approximately between $14,000 and $96,000 in additional fees[1].

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[1] Using this estimate, it equates to between $1,300 and $8,700 per year depending upon economic and business conditions of the hotels. The high range in the estimate is due to a high standard deviation of errors between the hotels and inconsistent methods the hotels used to determine the TID assessment fees owed.

The estimated TID leakage rate was caused by implementation of the City's ordinance that varied among the TID's nine participating hotels at the time of our review. One of these hotels collected and remitted the TID fee assessment in accordance with the City Ordinance. The other hotels variously did not assess a TID fee for government agencies that applied for exemption of the assessment fee and/or did not collect the fee from their patrons who used hotel rooms designated as "complimentary" by the hotel. The different methods of fee assessment occurred because the City did not conduct oversight of the TID to ensure effective compliance with the City's ordinance.

Governance, Accounting and Financial Internal Control Concerns are Present Although TID Spending is Consistent with City Ordinance

Although there was an absence of a formal contract with the TID Administrator to manage the TID, and an absence of spending authority that was not provided by the City Council, the spending by the TID Administrator between FY 2012-13 through FY 2016-17[2] generally aligned with the City's TID ordinance. Our review of the TID's general ledger identified spending on:

- Destination marketing;
- SCCC marketing efforts to attract additional conventions;
- Print ads;
- Advertising; and
- Administration costs.

During this time period, the TID Administrator was under budget an average of $86,000 per year.

TAP International examined 68 expense transactions for their appropriateness, allowability, and implementation of key internal controls, identifying 47 exceptions that can be considered significant deficiencies in internal controls.

- Nineteen expense transactions did not have any supporting documentation to verify the expense totaling about $308,172, including credit card expenses[3].
- Other exceptions included:
    - the lack of two signatories required for checks,
    - errors in posting expenses to incorrect sub-accounts, including insufficient detail to explain individual charges, and
    - checks that were generated prior to approval by both the TID Administrator and the TID President or Treasurer in contrast to the TID Administrator's policy.

How other expenses were managed was also problematic. The TID provides subsidies to selected event sponsors and to the SCCC for reimbursement of facility and lodging costs. Our analysis found that:

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[2] Excluding FY 2014-15 as the supporting documentation for the year was not available during the time of audit fieldwork.

[3] The TID Administrator reports that it was not given the opportunity to find documentation; however, the TID Administrator was aware of the missing documentation on November 6, 2018. Internal controls for financial management call for accounting records to be available for inspection and review upon request. An audit recommendation was directed to the City to review the records should the documentation become available.

- Some subsidies were posted as transportation subsidies because the TID Administrator did not create sub-accounts in the financial system, which has since been corrected by the new TID accountant.
- Although $418,172 in transportation subsidies were provided between FY 2012-13 and FY 2016-17, there is no transportation subsidy guideline governing their issuance.
- All sixteen awarded subsidies that we reviewed could not be accurately reconciled against the TID subsidy guidelines.
- The TID Administrator explained that the subsidies to the respective recipients speaks to the high level of repeat business. However, the TID subsidy guidelines do not include "repeat business' as a criterion for award; the absence of public transparency on the availability of the subsidies, and the concentration of subsidies ($170,682 out of $222,833, between July 2018 and July 2021) awarded to five event sponsors shows that not all event sponsors may have the same access to subsidies available to them (i.e. equity), and the TID Administrator and the City do not guarantee due process in awarding of the public funds (i.e. fairness).

TID Has Some Outstanding Bills

Because the TID Administrator records expenses upon their payment, TAP International reviewed outstanding bills owed by the TID. As of September 21, 2018, the TID has $132,642 in outstanding bills. The TID checking and savings account balances were $567,978 as of September 20, 2018 and are sufficient to pay these expenses. The funds available in the savings and checking accounts do not include approximately $201,884 in assessment fees for April through June of 2018 that the City has yet to remit to the TID.

Other Issues Noted

- TID Administrator has not effectively implemented key TID bylaws that we reviewed.
- Prior audit issues with the TID have not been resolved.

Recommendations

1. The City Manager should work with the City Attorney to determine how to address the improper collection of TID fees since FY 2005-06.
2. The City Attorney should conduct research to determine if the TID should cease or continue efforts to incorporate.
3. The City Manager should work with the TID Advisory Board to update the TID bylaws with particular attention paid to procedures for budget preparation and approval, recordkeeping requirements, allowable expenses, implementation of subsidies, policies and procedures to establish proper oversight of cash accounts, and conducting at least yearly board meetings with minutes prepared in sufficient detail to document discussion points, decisions and commitments.

4. The City Manager should develop and implement guidance and training for the TID's participating hotels on the City's TID ordinance and how the assessment fee should be calculated.
5. The City Manager should consider the feasibility of having the TID managed by City staff or contracting the management of the TID to a third party. If the City decides to contract with a third party, the contract should include all City required insurance coverages, performance expectations and reporting requirements for audited financial statements of the TID and related management letters.[4]
6. As the expense documentation for FY 2014-15 was found after the completion of audit fieldwork, the City Manager should decide if further work is warranted to review the expenses from that year for allowability, appropriateness and implementation of internal controls.
7. Upon the submission of appropriate documentation within a reasonable time period to support $308,172 in expenses missing during audit fieldwork, the City Manager should audit available records and based on the audit results, make any needed adjustment to the amount owed.
8. The City Manager should establish a contract manager to administer oversight of TID operations. Oversight activities should include periodic TID assessment fee audits, internal control audits and compliance audits.
9. The City Manager should consider working with the TID to update the subsidy program into a grant program that is open to all event sponsors to apply for public funds to offset the cost of events contracted at the SCCC.
10. The City Manager should determine whether to conduct a TID assessment fee audit of the one participating hotel that could not provide requested sample testing documentation regarding hotel occupancy for this audit due to illness.

Background Section

Background

In California, TIDs may be formed pursuant to Part 6, entitled "Parking and Business Improvement Area Law of 1989" (89 Act), of Division 18 of the California Streets and Highways Code (SHC). This Act allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. TIDs may also be formed by similar enabling ordinance by a charter city like the City of Santa Clara.[5] The City's Ordinance 1797 that creates the TID does not address whether

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[4] This recommendation was made to provide the option for contracting with a third party, regardless of whom that third party is. Presently, there is no formal contract for TID administration services. The current TID Administrator raised the issue that this report omits stating that over $8M of public funds were remitted without a contract or City Council approval. However, the report states in Section 2, page 11, that the "TID Administrator Assumed TID Operations without a Formal Contract." This report also states on page 1, the TID was assessing and collecting fees without proper authority. The authority would come from the City through Council approval.

[5] The City enabling ordinance for the TID does not require a third party to manage TID funds.

the City can manage and operate its own TID or whether the City is required to contract out operations to a third party.

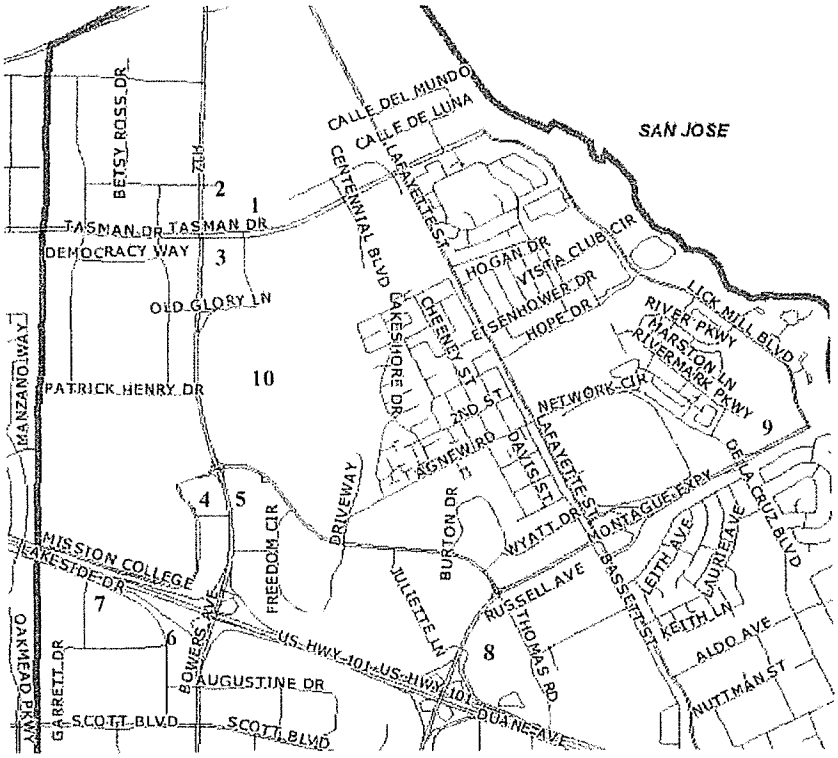
The key difference between TIDs formed under the 89 Act and other special benefit assessment districts is that funds raised may be returned to the private non-profit corporation under contract with the district to administer and implement the activities and improvements as specified in the TID budget. Assessment proceeds collected by a TID are public funds that are earmarked for a specific purpose.

The City's TID was established in January 2005 to use funds from the TID to create programs to promote tourism in the City. Per the City Ordinance 1797, the TID aims to sponsor an aggressive and colorful marketing campaign to attract additional travelers, tourists, and conventions. The funds from the TID are generated through a formula developed by the TID Committee. The assessment fee is based on a payment of $1.00 per room per occupied night for all hotel properties located within the boundaries established in Figure 1.

Figure 1: Santa Clara Tourism Improvement District Boundaries

MAP OF PROPOSED DISTRICT (CITY SOURCE)

1	Santa Clara Convention Center	5001 Great America Parkway
2	Westin Hotel	5101 Great America Parkway
3	Hilton	4949 Great America Parkway
4	Holiday Inn	4200 Great America Parkway
5	Santa Clara Marriott	2700 Mission College Boulevard
6	Embassy Suites	2885 Lakeside Drive
7	The Plaza Suites	3100 Lakeside Drive
8	The Biltmore	2151 Laurelwood Road
9	Sierra Suites	3915 Rivermark Plaza
10	Great America Theme Park	#1 Great America Parkway



As part of the Advisory Board's duties, an annual report must be presented for City Council review and approval prior to the beginning of each fiscal year. The annual report needs to comply with a provision regarding public notice and hearing prior to establishment of the benefit assessments for the following fiscal year. The submission of the TID's budget is a mandated part of the annual report.

The TID Administrator charged the TID $30,000 annually in management fees in addition to salaries, wages, taxes, incentives, benefits and overhead costs for CVB employees who provided support services to the TID.

Objectives

The City contracted with TAP International to address the following questions under this performance audit:

1. Have the hotels participating in the TID accurately remitted TID assessment fee revenue to the City for FY 2015-16 and FY 2016-17?
2. Are the expenses of the TID consistent with TID bylaws and policies since FY 2012-13?
3. What is the nature/extent of outstanding bills and payables that have not yet been recorded in the TID's financial system?

Scope

- TAP International focused audit efforts among the nine hotels currently participating in the TID and the management entity responsible for TID operations.
- The areas audited included financial management and administration.

Methodology

To determine whether hotels participating in the TID accurately remitted TID revenue to the City, TAP International reviewed remittance documents from the City, TID assessment fee reports from participating hotels, TID exemption forms, and the hotels' occupied room night reports. The time period of this analysis was FY 2015-16 through FY 2016-17. One of the nine TID hotels did not provide occupancy data to assess the accuracy of the TID fees collected because of illness of a staff member.

TAP International interviewed TID and participating hotel officials in order to understand how each hotel assesses, collects, and remits TID fees. We also compared TID revenue remitted to the City with TID assessment fee collection reports from the participating hotels. Each of the hotels' methods for collecting TID assessment fees were compared with guidance published in City Resolution 7176 and City Ordinance 1797.

To determine whether TID generated expenses were consistent with TID bylaws and policies, TAP International reviewed TID budgets, TID check registers, TID financial transaction data and performed analysis that categorized the types of expenditures incurred and reported under the TID. TAP International also performed statistical tests to identify and select financial transaction data to compare against original source documentation. Where data was available, TAP International examined 68 transactions for the allowability and appropriateness of the expense,

for application of proper internal controls governing review and authorization of the expenses, and determined whether the expense was accurately captured in the TID's general ledger. The results were summarized and discussed later in this report. The period of this analysis was from FY 2012-13 to FY 2016-17, except for FY 2014-15.

FY 2014-15 was excluded from this audit because all supporting documents associated with $860,795 in expenses that were paid by the TID Administrator were missing during the time of audit fieldwork. The documentation was eventually found on November 15, 2018, soon after issuance of the draft report. This timing did not permit sufficient time to include the review of the transactions in this audit. While the TID Administrator reported that its external financial auditor found that its expenses were appropriate, there was no means to verify that the third party's work examined the allowability and appropriateness of the expenses per City Ordinance. This report includes a recommendation to the City Manager to separately audit FY 2014-15 expenses for allowability, appropriateness, and implementation of other internal controls. The TID Administrator could not explain the initial lack of availability of the FY 2014-15 financial records, other than that they were misplaced and subsequently found.

To determine the nature and extent of outstanding bills and payables that have not yet been recorded in the TID's financial system, TAP International collected information on all outstanding invoices that were not yet posted in the TID's general ledger and analyzed and summarized the data. TAP International also compared the total amount of outstanding payables due by the TID against current cash available.

TAP International interviewed the TID Treasurer and President, City management, and staff from the TID Administrator.

Limitations of the Review

Some sampled expense data from fiscal years other than FY 2014-15 was also not available. The TID Administrator could not definitively explain the whereabouts of the records; these occurrences were identified as audit exceptions in this report.

CVB employees who provided management support activities for the TID through FY 2017-18 were not available for interviews due to structural changes implemented by the TID Administrator's organization regarding the CVB.[6] Other personnel responsible for TID administration were also not available due to resignations.

A draft report was provided to the TID Advisory Board President and Treasurer, the TID Administrator, and the City Manager's Office for review and comment. All applicable comments were incorporated into the report.

We conducted this performance audit from August 2018 to November 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and

[6] The organization serving as the TID Administrator terminated the employees of CVB who performed work for the TID. The organization's President/CEO explained that the CVB employees were not available due to the City not renewing the CVB contract with its organization. The organization opted to terminate employment of the CVB employees despite a June 2018 City decision to provide funds to the TID Administrator for the sole purpose of funding salaries and specific related costs for up to 60 days.

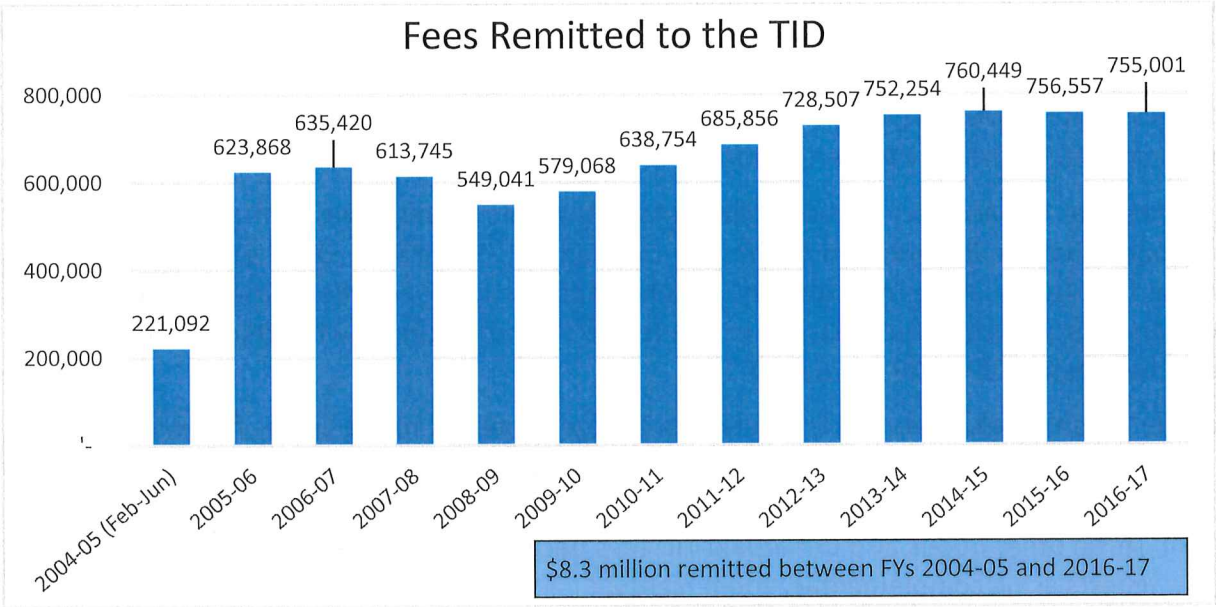
perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Section 1: Although the TID Did Not Have Proper Authority to Collect Fees for Most Years, the Fees Collected Were Generally Accurate

TID Assessment Fee Did Not Receive Proper Approval by the City Council After Initial Inception Until FY 2018-19

When hotel guests lodge at participating hotels within the TID, the hotels should assess fees of $1.00 per occupied room night to hotel guests. The fee is collected by the hotels and then remitted to the City. The City then remits the fees, less an administration fee of $3,000 per year, to the TID, who use the funds to support economic stimulation and business enhancement. Since inception in FY 2004-05, the City has remitted almost $8.3M in benefit fees to the TID[7], as shown in Figure 2.[8]

Figure 2: TID Assessment Fees Collected by Fiscal Year



Source of Data: TID Annual Reports

All TID assessment fees that were remitted to the TID Administrator by the City were deposited into a bank account owned by the TID administrator's organization, using the organization's own tax identification number and separated in the TID Administrator's accounting system by a general ledger identifier. The TID is in the process of filing the necessary documentation with the State of California for incorporation that would allow financial institutions to establish separate bank accounts under the TID's own tax identification number.

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[7] Per the TID Annual Reports.

[8] The TID Administrator raised the need for an audit recommendation to identify other public funds collected without compliance to public law. However, there is no evidence submitted by the TID Administrator of other funds improperly collected to support such a recommendation, or to support describing the issue as needing further review.

State law requires the City Council to annually renew the TID assessment fee by City Council Resolution, after it has reviewed and approved the TID annual report. The TID was formed under the 1989 State law authorizing TIDs, which requires the annual renewal of the assessment.[9] Based on available archived City Council meeting agendas and supplemental documentation, the City Council had approved the fee in the TID's first year of operations and had not formally renewed the TID assessment annually, as required by State law. Reversing this trend, in August 2018, the City Council formally approved the TID assessment for the next fiscal year. Without annual approval of the assessment fee, the hotels do not have formal authority to assess and collect the fee. The City historically did not perform oversight activities of TID operations to ensure City compliance with its own ordinance until the current City management identified the need for annual approval of the assessment fee and suspended the collection of fees effective July 1, 2018 until proper authority was provided by the City Council in August 2018.

Both the TID Advisory Board representatives and the TID Administrator reported they were unaware of the requirement of the annual approval for the assessment fee by the City Council and explained that City officials had never questioned the requirement until June.

Notwithstanding Governance Concerns, the Accuracy of TID Assessment Fees Collected and Remitted to the City Varied Among Hotels

Our review of the accuracy and completeness of the nine hotels' collection of the assessment fees found that implementation of the City Ordinance 1797 varied. One hotel had accurately remitted the fee assessment to the City. This hotel correctly applied the assessment fee formula requirements and collected $61,792 in TID fees from hotel guests who utilized 61,792 room nights between FY 2015-16 to FY 2016-17.

Another seven hotels were nearly accurate in TID fees remitted to the City as follows:

- Two of these hotels underpaid TID fees because government agencies requiring lodging were not charged the assessment fee.
- Three other hotels also underpaid TID fees because these hotels did not assess a fee for guests using complementary room nights.
- Another two hotels did not assess the fees for both government agency rooms and complementary rooms.

The remaining one hotel did not submit information to assess the accuracy of the TID fees collected because of employee illness.

Overall, the nine hotels were between approximately 98.8 and 99.8 percent accurate in their submittals collecting $1,517,569 in TID fees from hotel guests between FY 2015-16 to FY 2016-17. Hotel officials generally explained that they applied the TID assessment in the same manner as the transient occupancy tax (TOT), so that organizations that are eligible for TOT exemptions were also (incorrectly) exempted from the TID assessment fee. TOT taxes are generally assessed

[9] Cities may also form a TID under the 1994 State law, which does not require annual renewal of the assessment during the life of a district management plan. The TID did not include preparation of a district management plan.

as a percentage of revenue collected for each room charged lodging fees versus an occupied room night.

Based on our sample testing of TID assessment fees covering two fiscal years (2015-16 and 2016-17) the City could have collected between $2,500 and $17,500 in additional fees (referred to as leakage) had all the hotels uniformly implemented the ordinance requirements. Since the TID's inception, the City could have possibly collected between $14,000 and $96,000 in additional fees.

Section 2: Governance, Accounting and Financial Internal Control Concerns are Present although TID Spending is Consistent with City Ordinance

TID Administrator Assumed TID Operations without a Formal Contract

The TID Administrator does not have a formal contract with the City that outlines the full scope of services expected and the related fees. An agreement for the operations of the CVB for FY 2017-18 (CVB Agreement) between the City and a local nonprofit organization (Contractor), who also serves as the TID Administrator, stated that the Contractor was to manage certain aspects of the TID operations through the CVB. The CVB agreement required the Contractor to (1) manage TID advertising in lieu of an ad agency; and specified that (2) advertisements and trade shows in FY 2017-18 will be partially paid by the TID. Although a separate contract was not in place, the TID Administrator managed TID operations. TID Advisory Board members confirmed that because the formation of the TID was led by the current TID Administrator, the TID Administrator assumed operations. The TID Administrator had developed budgets, oversaw the spending of the TID funds, completed external financial audits in accordance with the TID bylaws, and coordinated annual meetings of the TID Advisory Board. The City acknowledged the TID Administrator's role in managing TID operations by remitting the TID fees to them. Upon acceptance of public funds remitted to the TID Administrator by the City, the TID Administrator has a responsibility to ensure the public funds are spent in accordance with the City Ordinance and TID bylaws. Without a formal contract, however, the TID Administrator did not have the City required insurance coverages for related operations or other requirements in place to guide operational accountability.

City TID Ordinance Requires a Budget to Govern Spending

The City's Ordinance 1797 (Section 16.10.1220) that establishes the TID contains a requirement for submission to the City of an annual report of the TID.[10] The annual report is to contain a budget describing the expenditure of TID revenues for the next fiscal year.

Article VII Finances, Section 4: Budget, of the TID bylaws states that the TID Advisory Board will be presented an annual budget for approval. This is a misstatement in the bylaws. Under state and local requirements[11], the TID Advisory Board does not have the authority to unilaterally approve the annual TID budget although Advisory Board can recommend approval to the City Council. City Council approval of the budget provides proper spending authority of public funds for programs and services as well as for entities such as the TID. The budget approval process ensures that the elected officials perform their fiduciary and oversight responsibility to ensure that proposed spending is consistent with the bylaws of the TID.

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[10] Also required in SHC, Div. 18, Part 6, Chapter 3, Section 36533

[11] SHC, Div. 18, Part 6, Chapter 3, Section 36530 and TID Ordinance Sec. 16.10.1220

The TID bylaws assign responsibility for compilation of the budget, by name, to a local nonprofit organization who serves as administrator/management of the TID. The bylaws do not explicitly assign responsibility to either the TID Advisory Board or the TID Administrator for presentation of the budget to the City Council. Based on available archived City Council meeting agendas and supplemental documentation, the City, for the past 13 fiscal years[12], did not approve an annual budget until August 2018 when the City Council formally approved the TID's budget for FY 2018-19. Prior to this, the City did not implement proper budget oversight to ensure that the TID Administrator submit the annual budget for the TID.

Figure 3, below, describes the state and local requirements for the TID annual report and budget process

Figure 3. Roles & Responsibilities for Development and Approval of the TID Annual Report & Budget According to State Law, Local Ordinance and TID Advisory Board Bylaws

Contractor: *Santa Clara Chamber of Commerce & Convention - Visitors Bureau*	TID Advisory Board	City of Santa Clara Mayor & City Council
State Law • Does not require a "budget" but says the annual report must contain, among other things, a description of the improvements and activities for the fiscal year and the estimated cost of providing those activities. "an advisory board shall make a recommendation to the city council on the expenditure of revenues derived from the levy of assessments..." (36530)	**State Law** • The Advisory Board shall make a recommendation to the City Council on the expenditure of revenues derived from the levy of assessments. State law requires an annual report, which includes the identification of the "improvements and activities" for that fiscal year and an estimate of the cost of providing those services, as well as any surpluses or deficits from the prior year. (SHC, Div. 18, Part 6, Chapter 3, Sections 36530 and 36533 (a))	**State law** • Requires the City Council to review, modify and approve the annual report presented by the TID Advisory Board, prior to adopting a separate resolution of intention to levy an annual assessment for that fiscal year and the expenditures of the funds collected according to the description of planned activities in the annual report. (Section 36534)
City of Santa Clara Ordinance • Submission of the annual TID budget is a mandated component of the TID annual report (Section 16.10.1220)	**City of Santa Clara Ordinance** • Decisions regarding the expenditures of funds (Section 16.10.1230) will be made in accordance with the applicable state laws.	**City of Santa Clara Ordinance** • Decisions regarding the expenditures of funds (Section 16.10.1230) will be made in accordance with the applicable state laws.

[12] FY 005-06 to FY 2017-18

TID Bylaws	TID Bylaws	TID Bylaws
• Compile a TID budget of estimated expenses and income for the upcoming year and prior to the beginning of the fiscal year. • Present it to the TID Advisory Board for approval. (Auditor Note: Advisory Board does not have authority to approve the budget but can make a recommendation to approve the budget.)	• The Contractor (SCC & CVB) will present the budget to the TID Advisory Board for approval.	• Does not address. The TID bylaws do not state what happens to the budget after it is submitted to the TID Advisory Board for approval, nor who shall submit the budget to the City Council for approval. The bylaws do state that funds may not be disbursed until after the budget is "approved" but does not say who must approve it first. (Article VII, Section 1: FUNDS)

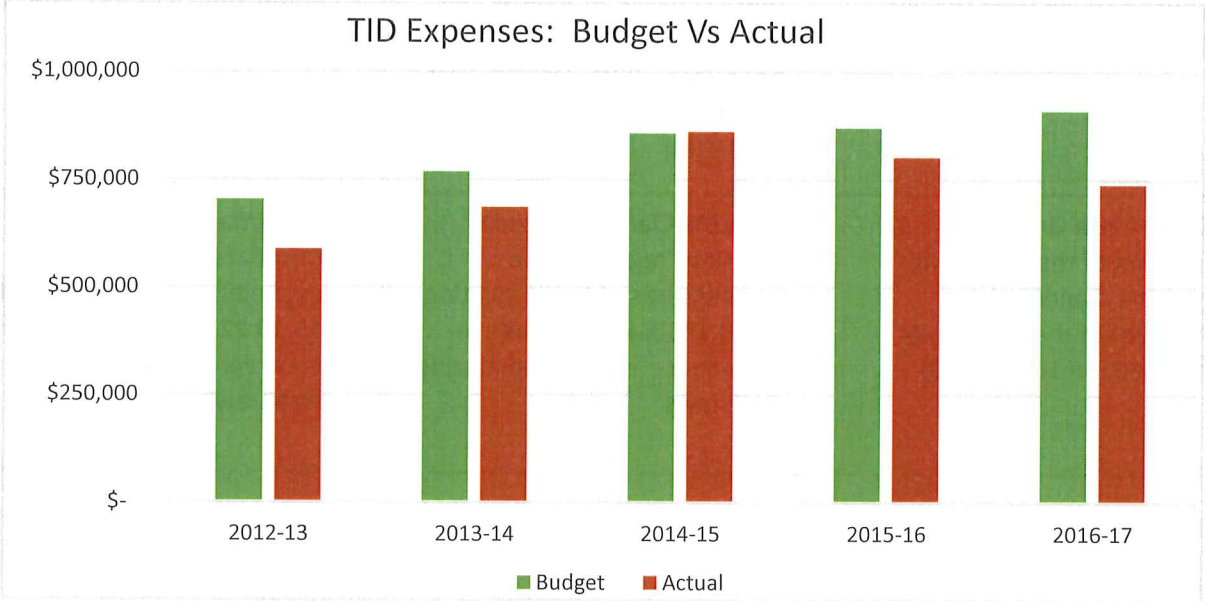
Source of Data: TAP International, Inc. analysis

Despite Absence of a Contract and Proper Spending Authority, TID Expenditures Align with Types of Expenditures Allowed Under State Law and City Ordinance

TID spending was analyzed using three methods of analysis: (1) budget vs. actual analysis; (2) review of spending against TID ordinance requirements; and (3) review of selected transactions.

The budget versus actual analysis showed that the TID spending was within the TID budget despite the absence of the spending authority for most years. As shown in Figure 4 below, the TID from FY 2012-13 through FY 2016-17 was underbudget four of the five years, totaling about $431,000 across the five years. The TID Administrator staff explained that the TID budget was used to supplement the budget gaps of the CVB.

Figure 4: TID Expenses: Budget vs. Actual



Source of Data: TAP International, Inc. analysis based on TID Audited Financial Statements.

The activities for which the TID has spent, or plans to spend money, generally align with the focus areas identified in recent TID annual reports (FY 2015-16 and FY 2017-18) as well the FY 2018-19 budget and the 2005 enabling Ordinance. The Ordinance states that the identified activities are only a partial list of the "types of improvements and activities" that could be provided by the TID (Section 16.10.1160 Purpose and Use of Benefit Assessments). Figure 5 compares the alignment of the seven areas of potential activities identified in the 2005 Ordinance to actual and proposed spending. The annual financial statements reflect the categorization of TID expenses that were spent in prior fiscal years and the budget shows what activities the TID plans to spend its monies.

Figure 5. Comparison of Areas for TID activities in Ordinance, Annual Reports, and Audited Financial Statements.

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(1) Sponsorship of an aggressive and colorful marketing campaign developed to **attract additional travelers and tourists.**	• Market and sell the TID as an overnight destination. (#1) • Through the Internet, publicize weekend hotel packages for individual consumers and families. (#9) • Update Santa Clara destination videos, including TID hotel content. (#5)	Leisure Marketing & Advertising Internet Marketing	Leisure Advertising Internet Marketing
(2) Sponsorship of aggressive marketing efforts to attract additional conventions.	• Enhance the City's position as a viable meeting, convention, and leisure destination and improve the overall awareness and perception of the destination. (#2) • Increase hotel occupancy and utilization of the SCCC. (#3)	Direct Sales (Trade Shows) Advertising: Conference Media Other subsidies	Trade Shows Conference Media

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(3) Possibly sponsor the services of consulting firm to prepare a **Travel/Tourism Marketing Study and Plan** for the purpose of determining where to focus marketing funds and what market(s) to target as well as what specific marketing programs might be most effective.	• Provide research funding to keep current with marketing trends and to monitor overall performance of the TID. (#8)	Research	Research
(4) Possibly sponsor **print ads** in Sunset, Via and other similar **travel publications**.	• Direct sales effort specifically targeting, sports and city-wide groups, short term business, weekend and holiday need period business and leisure, along with a variety of weekend packages and holiday packages. (#4)	Leisure Marketing & Advertising	Leisure Advertising
(5) Possibly sponsor a creative and colorful **outdoor advertising campaign**.	• Unable to determine.	Unable to determine	Unable to determine
(6) Possibly sponsor a commercial marketing campaign to attract specific **cultural groups**.	• Drive small group and city wide corporate, association, sports and SMERF type "A" business to the City, convention facilities and our Santa Clara hotel properties thru direct sales efforts. (#10)	Direct Sales (incudes Trade Shows) Advertising: Conference Media Operational Expenses & fees (includes subsidy liability)	Trade Shows Conference Media Other subsidies

2005 City Ordinance	TID Annual Reports (for FY2015-16 and for FY2017-18)	Budget Related Expense Categories (FY2018-19 Budget)	Audited Financial Statements (Related Expense Categories for FY2016-17)
(7) Sponsor **administrative costs** of program development and implementation.	• Upgrade technology systems when necessary to compete more effectively. (#6)	Staff Subsidy (includes Compensation and benefits, expenses, membership dues, monthly operating costs, bonus incentive, ADP, workers compensation insurance) Overhead (includes Insurance, Audit fees, SCCC Admin fee, check printing) Operational Expenses & fees (incudes Technology Systems)	Compensation and benefits Administration fee Rent Audit fees Bank fees Administrative meetings

Source of Data: TAP International, Inc. analysis

The review of 68 financial transactions for their appropriateness, allowability, and implementation of key controls found 47 internal control exceptions. Figure 6 below shows the results of the transaction review.

Figure 6: Results of Financial Transaction Review

Number of Transactions	Exception	Transaction Value
19	No supporting documentation, including for credit card charges.	$308,172
10	Insufficient signatory provided.	$129,084
14	Subsidies to event clients that were based on hotel room bookings were posted to a general ledger account for Travel Subsidies rather than a more accurate name such as client event subsidies.	$172,002

4	Four sample transactions included payments for Leisure Advertising within the reimbursement for CVB employee salaries and benefits. No supporting documentation was provided for these advertising payments.	$5,520

Source: TAP International, Inc. analysis

Our review identified other comparable issues. For example:

- For FY 2016-17, incentive payments totaling $1,950 could not be reconciled between the general ledger and the CVB incentive payment worksheets that detail incentive pay computation. For FY 2012-13 to FY 2015-16 incentive payments totaling $116,382 could not be reconciled because of the documentation detailing incentive pay computation was not available at the time of our review.
- Expenses shown on invoices received from law firms were incorrectly posted as incentive payments. The FY 2013-14 general ledger showed two legal firm payments reported under bonus and incentive payments. These transactions were not within our sample selection so are not included in the previous table.
- Checks were generated prior to receiving proper approval for the expense for most all sampled transactions because the process was redundant. TID Administrator staff explained that because a packet comprised of the invoice, check request form, and check for payment is submitted to the TID Board Treasurer all at once, and given the check payment had already been created and signed by the TID Administrator, it was not necessary to have the check requests signed. The TID Administrator executive management further explained that the TID Advisory Board approved the budgets and a TID authorized signer signed each check, including authorizing expenses and reviewed each payment. However, our analysis determined that this process was not fully effective because checks were generated without prior TID Advisory Board approval, checks were sometimes not signed by both the authorized TID Administrator and TID Advisory Board President or Treasurer, and specific expense detail was often not present to determine the allowability of the expense.

The absence of consistent application of internal controls does not provide the City or the TID Advisory Board assurance that expenses were appropriately authorized, reviewed, and paid as allowable.

Subsidies Could Not Be Reconciled

Between FYs 2012-13 and 2016-17, the TID provided approximately $418,172 to event sponsors and the SCCC using public funds, in the form of subsidies, when event sponsors met or exceeded hotel lodging levels. The event sponsors would receive reimbursement from $2 to $6 per room night, as shown in Figure 7. Since July 2018, there were four subsidies provided to event sponsors and another 12 planned for event sponsors contracted to use the SCCC through 2021. The TID Advisory Board members explained that the subsidies allow the CVB to encourage potential event sponsors to host events at the SCCC and use TID hotels.

Figure 7: TID Subsidy Policy

Subsidy Rate	Number of TID Hotels Used	Number of Peak Room Nights Used
$2	2	300
$4	2	400
$6	3	500

Source of data: SCCC Booking Policies and Procedures.

The audit identified the following exceptions:

- None of the 16 event subsidies provided and planned could be reconciled to subsidy policies. The CVB sales managers would determine, through negotiations with the potential clients, the amount of subsidies needed. If the subsidies needed exceeded the standard TID subsidy policy, the sales manager would need to request additional subsidies from the TID Advisory Board. E-mail records between the CVB and the TID Advisory Board that could aid in reconciliation were not available for review because the CVB employees were recently terminated by the City's Contractor that had managed the CVB.
- Four of the 16 events received $59,125 in transportation subsidies even though the TID does not have guidance in place offering this type of subsidy.
- Five of the nine organizations that have received or are planned to receive subsidies have received multiple subsidies, raising public fairness and equity concerns about the TID program. In other TIDs, such as City of Napa Tourism Improvement District and the County of Sonoma Tourism Improvement District, grant programs were established so that all event sponsors have the opportunity to apply for public funding based on specific eligibility criteria. The TID Administrator explained that the subsidies to the respective event sponsors speak to the high level of repeat business. However, TID subsidy guidelines do not include "repeat business" as a criterion for award and the absence of public transparency about the availability of the subsidies, and the concentration of subsidies ($170,682 of $222,833, or 77%) awarded to five of nine event sponsors shows that not all event sponsors may have the same access to subsidies made available to them (i.e. equity), and guarantee of due process by the TID Administrator and the City in awarding of subsidies (i.e. fairness).

Figure 8 on the following page shows the CVB incentive worksheet of current and future events.

Figure 8: CVB Incentive Worksheet

Meeting Name **********	Meeting Start	Meeting End	Contract Room Block Begin	Contract Room Block End	Attendees	Contract Rooms	Contract Peak	Pickup Rooms	Pickup Peak	TID Subsidy Type	TID Subsidy Transportation $2	TID Subsidy Total
Jehovah's Witnesses Convention 2018	07/06/18	07/08/18	07/05/18	07/08/18	5500	1350	450	0	0			$ 16,950.00
Jehovah's Witnesses Convention 2018	07/13/18	07/15/18	07/12/18	07/15/18	5500	1350	450	0	0			$ 16,950.00
National Championship 2018	07/19/18	07/22/18	07/18/18	07/22/18	4000	1815	560	0	0	Other		$ 8,275.00
Jehovah's Witnesses Convention 2018	07/27/18	07/29/18	07/26/18	07/29/18	5500	1095	365	0	0			$ 16,950.00
STITCHES WEST 2019	02/20/19	02/24/19	02/18/19	02/25/19	9000	1700	524	0	0	$6/room	3400	$ 13,600.00
CASL Conference 2019	04/04/19	04/07/19	04/01/19	04/08/19	1000	1856	451	0	0	$2/room		$ 3,712.00
2019 CAEYC Conference & Expo	04/11/19	04/13/19	04/09/19	04/13/19	3000	1270	513	0	0	$6/room	$2,540.00	$ 10,160.00
STITCHES WEST 2020	02/19/20	02/23/20	02/17/20	02/25/20	9000	2354	666	0	0	$6/room	4708	$ 18,832.00
2020 CA DECA Career Development Conference	02/28/20	03/02/20	02/27/20	03/01/20	1800	2599	864	0	0	$6/room	$5,198.00	$ 20,792.00
2020 NCCNA XLII Convention	04/09/20	04/12/20	04/08/20	04/13/20	5000	1927	713	0	0	$6/room		$ 9,300.00
CETPA 2020 Annual Conference	12/02/20	12/05/20	11/30/20	12/05/20	2000	2668	900	0	0	$6/room	$5,640.00	$ 22,560.00
STITCHES WEST 2021	02/17/21	02/21/21	02/15/21	02/21/21	7000	2259	645	0	0	$6/room	4518	$ 18,072.00
2021 CA DECA Career Development Conference	03/05/21	03/08/21	03/04/21	03/07/21	1800	2599	864	0	0	$6/room	$5,198.00	$ 20,792.00
CASL Conference 2021	04/08/21	04/11/21	04/05/21	04/12/21	1000	1856	451	0	0	$2/room		$ 3,712.00
2021 CAEYC Conference & Expo	04/15/21	04/17/21	04/13/21	04/17/21	3000	1270	513	0	0	$6/room	2540	$ 10,160.00
2021 Annual Convention	07/04/21	07/11/21	06/24/21	07/13/21	1000	3004	450	0	0	$4/room		$ 12,016.00

Source of Data: Santa Clara Convention Center, the entity responsible for the payment of subsidies.

Section 3: TID Has Some Outstanding Bills

The TID uses a cash basis of accounting, meaning that revenue and expenses are accounted for upon payment and receipt rather than when earnings and expenses are incurred. The external financial auditor for the TID noted that the TID's cash basis of accounting represents a departure from generally accepted accounting principles (GAAP)[13]. The purpose of GAAP is to ensure that financial reporting is transparent. Government entities must follow a set of GAAP standards as determined by the Governmental Accounting Standards Board (GASB).

Under a cash basis of accounting, outstanding bills will not be recorded in any financial report until the bills are paid. Concerns would exist if there were multiple invoices that were not yet paid over a long period of time. Our analysis showed that outstanding bills totaled about $132,642 as of September 21, 2018. All of the outstanding bills to the TID were for reimbursement of expenses that were previously paid by the SCCC or CVB. The TID accounting manager explained that the marketing and convention center expenses would normally have been paid directly from a TID checking account (created under the TID Administrator's tax identification number), but because the TID accounts were frozen by the City, the SCCC and CVB had paid the expenses and subsequently have billed the TID. The expense for employee wages, benefits, and taxes are normally paid by the CVB, then invoiced monthly to the TID for reimbursement.

The TID checking and savings account balances of $567,978 as of September 20, 2018 are sufficient to pay the outstanding payables shown in Figure 9. This balance does not include approximately $201,884 in TID assessment fees for April to June 2018 that the City has collected but has not yet remitted to the TID.

Figure 9: Outstanding expenses, Tourism Improvement District as of September 20, 2018

Date	Payee	Amount	No. of Days Outstanding (as of 9/21/18)	Nature of Expense	Description
8/28/2018	Santa Clara Convention Center	$645.00	24	Overhead	Renewal for QuickBooks Online subscription. Initially paid by SCCC employee, who was reimbursed by the SCCC, who then billed the TID.

[13] Per TID Audited Financial Statements and Independent Auditors' Reports

5/27/2018	KGO-TV	$3,690.00	117	Marketing	Charge for social media video distributed via ABC7News.com and ABC7Social.com. This expense was paid by the CVB and billed to the TID.
8/28/2018	SC Chamber/CVB	$61,091.98[14]	24	Operational	Reimbursement of employee benefits, taxes, wages
8/28/2018	SC Chamber/CVB	$6,427.97	24	Operational	American Express Credit Charges, June 2018
8/28/2018	SC Chamber/CVB	$335.86	24	Operational	Mastercard charges, June 2018
8/28/2018	SC Chamber/CVB	$601.36	24	Operational	Employee expense reimbursements
7/31/2018	Santa Clara Convention Center	$50,850	52	Subsidy Payment	Subsidy for Christian Congregation of Jehovah's Witnesses Convention (3 separate events)
9/21/2018	Destination Advantage	$9,000	0	Marketing	Internet marketing services
TOTAL		**$ 132,642.17**			

Source of Data: Santa Clara Convention Center

[14] Includes: employee salaries, taxes and 401(k) for June to August 2018, employee bonuses for quarter ending June 2018 and benefits for July to August 2018.

Section 4: Other Issues

TID Administrator Has Not Effectively Implemented TID Bylaws

During the course of our activities to address the audit objectives, TAP International identified significant issues applicable to the TID bylaws. These bylaws describe the basic governance and management activities of the TID. As shown in Figure 10, of five selected bylaw established in 2009:

- One was in the process of implementation at the time of our review
- Another was in partial compliance regarding holding and documenting annual meetings.
- Two bylaws were not implemented and one of them was improperly stated
- One bylaw was partially implemented although the bylaw was improperly stated

The TID Administrator questioned whether it had responsibility for implementing the TID bylaws and explained that it was the responsibility of the TID board itself to implement the bylaws. Basic governance tenants call for a board to have responsibility for ensuring that the managing body have implemented requirements in accordance with governing documents. Although no formal contract had been implemented between the TID Advisory Board and the organization serving as the TID Administrator, or between the TID Administrator and the City, the TID Administrator was implementing key aspects of TID operations, from budgeting, spending, implementing TID guidelines, and ensuring implementation of third party financial audits. In addition, when the TID Administrator accepted public funds from the City, the organization had a responsibility to implement and comply with the TID's governing documents.

Figure 10: TID Compliance Issues Identified by TAP International, Inc.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article I, Section 1:	TID is incorporated	**In Process.** Bylaws are misstated. The TID has not been incorporated. Only recently has the TID Advisory Board begun process of incorporating the TID with the State of California.	TID fees were deposited into the TID Administrator's core organization's bank accounts.	The City did not conduct oversight to ensure incorporation occurred or whether incorporation was needed.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article III, Section 1:	An annual meeting of the TID Advisory Board should be held.	**Partial compliance.** TID Advisory Board reported that meetings were held, but there was no documentation of meeting agendas or meeting minutes.	Absence of governance.	Absence of effective governance by the TID Administrator.
Article IV, Section 4:	TID has an agreement with the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau to manage the TID program.	**Not implemented and improperly stated.** TID has no contractual authority to enter into an agreement with the Chamber or CVB.	Misstatement of bylaws has led to misinformation among TID Administrator employees.	The City did not conduct oversight of the TID. TID Administrator did not follow up to ensure that an agreement was prepared.
Article VII, Section 1:	Funds unused from the current year's budget will be placed in a reserve account. Monies allotted to subsidies will be placed in a money market account.	**Not implemented**. Funds remaining from the prior year budget were not regularly transferred to a reserve account and funds used for subsidies were drawn from the same account that was used for operating expenditures.	Funds were not separated for transparency and ease of identification of use.	The TID Advisory Board and Administrator were not aware of this requirement.

TID Bylaw	Bylaw Description	Issue	Impact	Cause
Article VII, Section 4:	TID budget is to be presented to the TID Advisory Board for approval.	**Partially Implemented, and Improperly stated.** TID Advisory Board is an advisory board and should not have budget approval authority. It can provide a recommendation for the City Council to approve the budget.	City Council was not provided the budget for approval as required by the City Ordnance.	TID Administrator was unaware of State law and City Ordinance requirements.

Source: TAP International, Inc. analysis

Prior Audit Issues for the TID Have Not Been Resolved

As required by generally accepted government auditing standards, a review of prior audit reports[15] is necessary in planning and conducting audits. As shown in Figure 11, our review of the FY 2016-17 audited financial statements and the related management letter to the TID Advisory Board and the Management of the TID identified that:

- Two of the five audit recommendations made by the external auditor were not yet implemented.
- One recommendation was partially implemented.
- One recommendation was in progress at the time of our review.
- One recommendation is no longer applicable to the TID.

We were not able to determine if the recommendations were made in prior year end audits as not all management letters were available through the TID Administrator.

[15] Santa Clara Tourism Improvement District Financial Statements and Independent Auditor's Reports for FY 2012-13 to FY 2016-17.

Figure 11: Status of Prior TID Audit Issues

Issue Identified	FY 2016-17 External Auditor Recommendation	Status
Record Storage and Retrieval	Accounting records frequently could not be located when needed. The TID Administrator informed the external auditor that procedures were implemented.	**Not Implemented.** Accounting records were not available to TAP International for FY 2014-15. Some transaction files were missing from the other in-scope years. No new policies and procedures had been developed.
Support for Cash Disbursement Needed	Santa Clara Tourism Improvement District should require that supporting receipts be submitted for all charges for which it is practical to obtain a receipt and that the business purpose of the expense be clearly documented and a formal policy be adopted that prohibits the personal use of business credit cards and requires sufficient supporting documentation for all charges.	**Not implemented.** TID Advisory Board members are not aware that credit card policies and procedures have been prepared.
Bank Account Access Capabilities	The Board should contact Key Point to update authorized users and remove inactive persons timely, to avoid any unplanned account activity.	**In Progress** The TID Advisory Board reported that bank account updates will occur by November 9, 2018.
Documentation and Maintenance of Critical Information	A written agreement should be prepared and signed between the Tourism Improvement District and the Santa Clara Convention Center to perform all services necessary to direct, manage, and supervise the operations of the District as of September 2016. The agreement should name the parties involved, list the item of the services, and identify the fees.	**Not applicable.** The TID does not have contractual authority to enter into the agreement.

Issue Identified	FY 2016-17 External Auditor Recommendation	Status
Board Meetings	Santa Clara Tourism Improvement District should have at least one annual meeting of the Board of Directors. Discussion minutes of the meeting should be taken to clearly document all decisions made and approved by the Board. The minutes should also be retained as evidence of the meeting and related actions.	**Partially implemented.** TID Advisory Meetings reported that meetings were held, but there was not documentation of meeting agendas or meeting minutes.

Source: TAP International, Inc. analysis of TID Audited Financial Statements