

**Council Meeting: April 8, 2008**

**SUBJECT:** Conduct Protest Hearing and Adoption of the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District

**REPORT IN BRIEF**

On March 18, 2008, the City Council adopted a Resolution of Intention (ROI) to reauthorize the Downtown Sunnyvale Business Improvement District (BID). The Resolution established April 8, 2008 as the date for a public hearing to consider BID reauthorization. The public hearing gives businesses within the proposed zones of the BID an opportunity to express their comments to City Council. City Council will hear and consider any and all protests against the reauthorization of the BID, and/or any protest regarding the proposed activities of the proposed BID. If, at the conclusion of the public hearing, there is a record of protests from owners within the BID that would pay fifty percent (50%) or more of the total assessments of the entire BID, no further proceedings to reauthorize the BID can occur. Staff recommends that Council adopt the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment reauthorizing the BID for FY 2008/2009 for Downtown Sunnyvale, if protests do not exceed 50 percent of the total assessments.

**BACKGROUND**

On March 6, 2007, Ordinance 2830-07 was adopted by Council and the BID was established for Downtown Sunnyvale (Title 3, Chapter 3.60 of the Sunnyvale Municipal Code). The Board of Directors (Board) of the BID requested a reauthorization for FY 2008/2009 and a Resolution of Intention for reauthorization was adopted on March 18, 2008. Council approved Alternative 2 which states "Approve the BID Annual Report for FY 2007/2008 and adopt the Resolution of Intention and schedule a public hearing for April 8, 2008 to reauthorize the Business Improvement District for FY 2008/2009 for Downtown Sunnyvale". Council also made an amendment to include enhanced maintenance for Murphy Avenue for FY 2008/2009 and approved the budget to maintain the same level of service provided in FY 2007/2008. Council also requested that, if allowed by law, the BID contribute \$100 towards the Murphy Avenue enhanced maintenance costs.

Approximately 130 businesses are located in the BID area, bounded by Sunnyvale, Iowa, Mathilda and Evelyn Avenues. The BID's Board is made up of

the Sunnyvale Downtown Association representatives. The Board has requested that the BID be continued for FY 2008/2009.

A BID is a private sector funding tool that provides funding for specific activities. Businesses pay into the BID based on the benefit they receive as members of the district. The purpose of a BID is to promote and improve a specific geographic area for the benefit of the businesses in the BID area. A BID is a tool used by over 200 business areas in California, including Mountain View, Palo Alto, Santa Clara, Morgan Hill and San Jose.

A BID can only be reauthorized at the request of business owners. A BID cannot be reauthorized if businesses paying more than 50% of the assessment file a protest. The funds collected can only be used for projects within the BID boundaries. The fact that the business community maintains full control of all BID funds collected is a very strong sales tool when asking for support from business owners at the time of annual approval of the BID.

The formula for determining the BID assessment is determined by the Board, not the City. The Board takes into account the type, size, and location of the businesses and determines the most equitable formula for each type of business. Assessments are levied on businesses on the basis of relative benefit from the activities to be funded. The City collects the fee on an annual basis. All assessment funds collected by the City are returned to the BID through annual contract agreements. The City does collect a fee for administrative costs associated with this service. The cost is reviewed and adjusted annually as needed.

### **EXISTING POLICY**

#### **Socio-Economic Element: Economy and Employment**

Policy 5.1B.2: Participate in partnerships with local industry/businesses in order to facilitate communication and address mutual concerns.

Policy 5.1C.1: Support efforts to establish Sunnyvale's downtown area as a strong commercial center for the City.

#### **Land Use and Transportation Element**

Policy N1.13: Promote an attractive and functional commercial environment.

Policy 2.5D2k Continue to encourage pedestrian and commercial activity on the sidewalks of the historic 100 block of Murphy Avenue.

## **DISCUSSION**

The BID boundaries were established based on the area in Downtown Sunnyvale that would benefit from a BID. Inside the BID area, the Committee sets the benefit zones by matching the amount paid and the benefit received by each business. Each business was rated by business type and location so that the assessment would be equitable to all businesses within the BID. For Fiscal Year 2008/2009, the BID's Board is recommending no changes in boundaries or the method and basis for levying the assessment (Attachment C).

The Sunnyvale Town Center area (Town Center) is included as a Zone C participant. Section 10.05 of the Amended and Restated Disposition and Development and Owner Participation Agreement (ARDDOPA) between the Redevelopment Agency and Downtown Sunnyvale Mixed Use, LLC requires the developer to support a BID in Downtown Sunnyvale. The ARDDOPA specifically states:

*"In the event a business improvement or property improvement district (District) is formed for the downtown, Developer shall not oppose or protest such formation".*

The assessment amount is to be determined, along with other businesses, during the reauthorization process. The Board does not expect additional assessment funds from Town Center because it is currently under construction and no tenants are in place for FY 2008/2009 BID. If the BID is reauthorized for a third year, the Board will include Town Center tenants in the total assessment.

The City Attorney reviewed BID law and determined that Council can make the request that the BID contribute funds for enhanced maintenance. Therefore, the Council's action on March 18, 2008 to ask the BID to contribute \$100 towards the Murphy Avenue enhanced maintenance costs is allowable. However, the BID will have the option to accept or decline this request once the FY 2008/2009 BID is financed and once the projects/tasks are adopted by the BID Board.

If the Resolution of Intention to Levy an Annual Assessment and reauthorize the Downtown Sunnyvale Business Improvement District is adopted, the BID can then adopt a list of activities to be funded by the BID. However, the final activities cannot be voted on by the Board until the BID is funded. Assessments are expected to be collected no later than June 2008 for a July 1, 2008 activation date.

The Public Hearing provides the opportunity for protests to be heard. If a majority protest is not filed, the City Council may establish a BID for FY 2008/2009 by adopting the attached Resolution of Intention to Levy an Annual Assessment to be administered pursuant to Title 3, Chapter 3.60 of the Sunnyvale Municipal Code. Council cannot add territory to the boundaries or change the annual assessment fee without notifying business owners of that change, and only after holding a full and formal public hearing. Title 3, Chapter 3.60 of the Sunnyvale Municipal Code established the benefit assessment and provides the purpose and use of the assessments collected, as administered by the board of directors, as well as the time and manner of collecting the fees.

If protests are filed by business owners who would pay 50% or more of the proposed assessment, a BID cannot be reauthorized for FY 2008/2009 nor can it be pursued again for one year. If the majority of protest is only against the furnishing of a specific type or types of activities, those types of activities must be eliminated. Approximately 130 businesses are located in the area bounded by Sunnyvale, Iowa, Mathilda and Evelyn Avenues.

As of February 2008, the BID collected a total of \$27,060 in business assessments for FY 2007/2008. The uncollected amount of \$4,135, of which \$2,750 is for assessment fees and \$1,385 is for penalty fees, has been sent to a collections agency by the Finance Department. BID Board members are also actively working to collect these amounts by contacting businesses with an outstanding balance. The FY 2007/2008 BID budget included:

- \$42,000 (revenue generated from the Summer Music Series event)
- \$22,500 (event sponsorships)
- \$27,060 (BID assessment revenue)
- \$91,560 BID budget for FY 2007/2008

At the time the BID was approved for FY 2007/2008, the BID did not have a work program. The work program was developed after the BID was approved and revenues were collected. Based on the BID's annual report (Attachment B), the BID's focus for FY 2007/2008 was:

- to develop a marketing program which included the development of a website (DowntownSunnyvale.com),
- continuance of downtown events such as the Summer Music Series and the Holiday Tree Lighting,
- to include additional clean-up, such as street sweeping and pressure washing on Murphy and part of Washington Avenue, during special events, and
- to expand outreach to its members by developing an extensive email list and electronic newsletter

This email list has improved communications with the Downtown business community for the BID as well as for City staff. The BID is able to assist City staff in distributing information regarding current and future phases of projects in Downtown Sunnyvale.

The BID's FY 2008/2009 budget includes:

- \$27,460 (revenue from the BID assessment (Attachment C, Page 1, provides a breakdown of assessment collections which includes, Zone A at \$17,100; Zone B at \$3,700; and Zone C at \$6,660))
- \$50,000 (revenue from special events, such as the Summer Music Series), and
- \$65,000 (projected sponsorships).
- \$142,460 (projected budget for FY 2008/2009)

The total budget, however, is dependent on total assessments collected, as well as the success of special events and the ability to secure sponsorships.

For FY 2008/2009 (Attachment D), the BID plans to:

- continue the special events (such as the Summer Music Series and the Holiday Tree lighting),
- continue the marking and promotion of Downtown Sunnyvale,
- maintain its website ([www.SunnyvaleDowntown.com](http://www.SunnyvaleDowntown.com)),
- develop a business directory, and
- continue maintenance of the Murphy Avenue tree lights.

### **FISCAL IMPACT**

During FY 2007/2008, the City's direct cost to collect the BID assessment is estimated to be \$2,886 and 48 staff hours. The Finance Department estimates the costs and hours will remain unchanged for FY 2008/2009, assuming that the total number of businesses within the BID zones remains at about 130. The City's cost would be reviewed and adjusted annually and will be included as part of the BID budget as reimbursement to the City. The cost would be dependent on staff hours and cost of those hours.

Adoption of the Resolution of Intention to Levy an Annual Assessment and reauthorizing the Downtown Sunnyvale Business Improvement District should result in a positive fiscal benefit from continued and increased business activity in the Downtown area. Businesses may be able to increase their sales, thereby generating higher sales tax revenue for the City. First and second

quarter of FY 2006/2007 sales tax revenue generated within the BID area was approximately \$348,900 while FY 2007/2008 has generated about \$358,300.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk. The Resolution of Intention adopted on March 18, 2008 was published in the legal ads section of the Sunnyvale Sun on March 26, 2008.

**ALTERNATIVES**

1. Adopt the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District.
2. Do not approve the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District.
3. Continue item and restart the legal process, beginning with re-noticing for a Resolution of Intention.

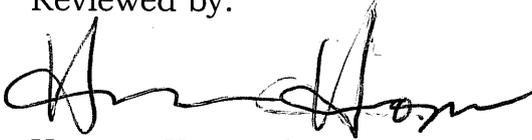
**RECOMMENDATION**

Staff recommends approval of Alternative #1.

This alternative will allow the BID Board to continue and expand its work program that was started during the BID's first year. The BID constitutes a private funding source that is targeted to the Downtown. To the extent that the BID's activities enhance the Downtown and its business climate over the long term, the BID contributes towards enhanced City revenues through increased sales and property taxes.

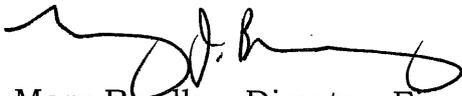
Unless the protests exceed the 50% or more from businesses within the proposed BID district, it is the recommendation of staff that the City Council approve the reauthorization of the Downtown Sunnyvale Business Improvement District.

Reviewed by:



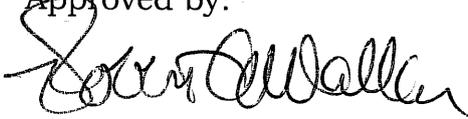
Hanson Hom, Director, Community Development  
Prepared by: Maria Rodriguez, Administrative Analyst

Reviewed by:



Mary Bradley, Director, Finance

Approved by:



 Amy Chan  
City Manager

**Attachments**

- A. Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District
- B. BID Annual Report for FY 2007/2008
- C. Possible Annual BID Budget and Method and Basis for Levy
- D. Proposed Annual BID Programs

# ATTACHMENT A

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF INTENTION OF THE CITY OF  
SUNNYVALE TO LEVY AN ANNUAL ASSESSMENT FOR  
THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT  
FOR FISCAL YEAR 2008-2009**

WHEREAS, on March 18, 2008, the City Council of the City of Sunnyvale (the "City") adopted Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District (Resolution No. 310-08) (the "District"), to levy a benefit assessment on all businesses, trades, professions, and vendors within said District, the proceeds of which shall be used for the public purposes herein described in the Parking and Business Improvement Area Law of 1989, (commencing with Section 36500), of the California Streets and Highways Code (the "Act") and Title 3, Chapter 3.60 of the Sunnyvale Municipal Code; and

WHEREAS, the City Council conducted a public hearing, having given due notice thereof as required by law, on April 8, 2008, at 7:00 p.m. at City Hall, 456 West Olive Avenue, Sunnyvale, California, and every interested person was provided an opportunity to object or protest the assessment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE:

1. Report. The City Council hereby approves the Business Improvement District Annual Report for FY 2008-2009 ("Annual Report").
2. Boundaries. The City Council hereby approves of the boundaries of the Business Improvement District and the benefit zones within the area as set forth in the Annual Report.
3. Assessment. The City Council finds that the amount of the assessments has fairly and properly apportioned the cost of the improvements to each business in the District in proportion to the estimated benefits to be received by each business. The City Council hereby confirms the assessment and levies each individual assessment, as provided for in the Annual Report, for fiscal year 2008-2009.
4. Protest Hearing. The City Council conducted a protest hearing concerning the reauthorization of the business improvement district. At the conclusion of the public hearing, the City Council did not receive written protests by the owners of the businesses within the District that will pay fifty percent (50%) or more of the total assessments of the entire District.
5. Method of Collection. The benefit assessment established by this chapter for Sunnyvale businesses shall be billed and collected in the same manner as the County of Santa Clara ad-valorem property tax payments for Fiscal Year 2008-2009. If the assessment for any parcel remains delinquent at the time

the assessments are submitted to the County for inclusion in the FY 2008-2009 property tax roll, the delinquent FY 2007-2008 assessment payment and associated fines and penalties may be added to the FY 2008-09 assessment obligation.

Adopted by the City Council at a regular meeting held on April 8, 2008, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

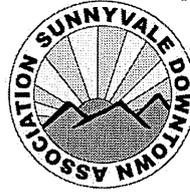
\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney

# ATTACHMENT B



February 4, 2008

TO: Mayor and City Council Members  
City of Sunnyvale

FROM: Downtown Sunnyvale Business Improvement District (BID) Board  
Sunnyvale Downtown Association (SDA)

RE: State of the BID/SDA

Dear Sirs and Ma'am,

**Past**

Attached (Exhibit A) is a copy of the SDA's expense & revenue report for 2007 and projected budget for 2008. These numbers reflect as of April 2007 until today. Once we have a complete year under the BID I'll break it down annually on a fiscal calendar running from July to June.

Our start-up funding comes from the BID which amounted to approximately 25,000. The board decided to use the monies to produce the Holiday Tree Lighting and the Summer Music Series. The production of those two events grossed 65,000 from sales and sponsorships. Once the expenses for the year were subtracted the SDA netted 20,000.

**Present/For the Year**

The Board approved the Executive Director's recommendation to add one additional winter event, summer and fall event to our calendar. Those events were: St. Patty's Day, Cinema In The Plaza and Sunfest.

**Event Sales**

For 2007, Summer Series averaged \$4,200 per week in beverage sales, approximately 90% of it being alcohol sales and 10% non-alcohol. Holiday Tree lighting grossed \$400, 20% being alcohol and 80% non-alcohol (hot chocolate).

We expect St. Patty's to be much like a Summer Music Series (Exhibit B) in terms of sales and Cinema In The Plaza to be more like the Holiday Tree Lighting. Although we believe the Cinema In The Plaza to be even less sales due to the fact that we anticipate people bringing their own food & drink.

**Event Sponsorships**

Despite the weakened economy we brought in record sponsorships for The 2007 Holiday Tree Lighting coupled with our two new events (St. Patty's and Cinema In The Plaza) we expect to nearly triple our sponsorships for the year 2008 due to BID Board's marketing and outreach to the business and corporate community.

### Future

The BID Board strongly recommends that we continue the BID assessment. The BID serve's as the SDA's seed money. Without the BID, we couldn't provide the services and events to our community. The BID will continue with the Summer Music Series, Holiday Tree Lighting as well as other events to promote downtown Sunnyvale. These events are especially important to continue to attract patrons to downtown during the construction of Town Center and other upcoming projects scheduled on Murphy Ave. and the Mathilda Ave. overpass.

Commercial marketing and promotion will continue. Resources for marketing will include local and regional publications. Maintenance of the SunnyvaleDowntown.com site is also key to reach a broader population group. Our plans are also to develop a business directory that will be available online and will simplify a customer's search for restaurants and services in Downtown Sunnyvale.

### Contract Labor

For 2008, we sub-contracted help to answer phone and some administrative work.

### Staff Salaries

In 2007 we hired our first Executive Director (ED) only to lose him to another job opportunity. Our current ED was hired in November 2007 at a rate of 24,000 for the year.

### Overview

Adding in 2008: two new events, a paid ED and sub-contracting work will potentially require an additional \$13,000 from the BID reserves. In the future, the new events are expected to help the organization financially; however, as with start ups, the first few years are expected to be focused on marketing and attracting visitors to Downtown Sunnyvale. Any revenue generated from new events or projects, if any, will be reinvested into those same events or projects.

Our office is virtual therefore there are no office attributed expenses presented on our report, but the needs of having a physical presence in our community is becoming more evident. This may change soon adding more expenses to our bottom line.

Proposed projects are based on proposed budget for 2008. Projects/events will be modified based on budget actuals as assessment fees and sponsorships are received.

Thank you for your support.

If you have any questions please do not hesitate to call the SDA @ 408 516-7217.

# ATTACHMENT C



## 2) Expenditures

<u>Program</u>	<u>Amount</u>	<u>Percent</u>
1) Commercial Marketing Program	\$78,353	55%
a) Advertising and promotion		
b) Theme development		
c) Special events and activities		
d) Visitor attraction		
2) Civic Beautification and Signage Program	\$7,123	5%
a) Streetscape beautification, lighting		
b) Public arts programs		
c) Public-private directional signage		
3) Programs Administration and BID Management	\$56,984	40%
<hr/>		
Totals	\$142,460	100%

Proposed Annual BID Benefit Fee

	ZONE A	ZONE B	ZONE C
Retailers, Restaurants, Bars	\$500	\$300	\$150
Service Businesses	\$300	\$200	\$100
Lodging	\$10/rm.	\$10/rm.	\$10/rm.
Professional Services Businesses	\$100	\$100	\$100
Financial Institutions	\$500	\$500	\$500

**Business type definitions:**

Retail and Restaurant: Businesses that buy and resell goods, examples are clothing stores, shoe stores, office supplies as well as businesses that sell prepared foods and drinks.

Service Businesses: Businesses that sell services. Examples are beauty and barber shops, repair shops, most automotive-oriented businesses, entertainment businesses such as theaters, etc.

Lodging: Includes renting rooms by the day or week to community visitors.

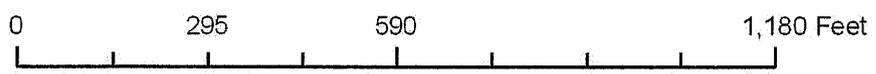
Professional Services Businesses: Includes Architects, Engineers, Attorneys, Dentists, Doctors, Accountants, Optometrists, Realtors, Insurance Offices, Mortgage Brokers and most other businesses that require advanced and/or specialized licenses and/or advanced academic degrees.

Financial Institutions: Includes banking and savings and loan institutions as well as credit unions, etc.



	ZONE A
	ZONE B
	ZONE C

# ZONES



# ATTACHMENT D

## Proposed Annual BID Programs - Present and Future

A) Current Programs: The best of the current downtown programs will be retained while being made bigger and better. Several of those are as follows:

- Sunnyvale Summer Series - Music and Market
- Annual Holiday Tree Lighting
- St. Patty's Day
- Cinema in the Plaza
- Downtown Sunnyvale Website

B) Possible Future BID Programs: Many new, creative and colorful Commercial Marketing and Special Events programs are planned for the benefit of BID members. In addition to commercial marketing and special events, other member benefit programs will include Civic Beautification and Signage as well as a specific Member Services Program.

Several of these new and continued programs for Fiscal Year 2008/2009 are as follows:

### **Program 1) Commercial Marketing and Promotion**

This Commercial Marketing Program has been created to enable local businesses to compete more successfully and cost-effectively, for tenants and customers, with nearby commercial centers and malls, such as are found in San Jose and Palo Alto. This is to be accomplished by establishing a means of supporting the long-term and day-to-day needs of Sunnyvale's retailers while aggressively attracting visitors and shoppers into the traditional central business district.

Among other projects, the BID program will sponsor the publication of a Directory of Downtown Sunnyvale Goods And Services which will identify and promote all business types within the area. Businesses will be listed according to name, type of business and location. A brief description of each business will be provided as part of the listing.

The Directory information will serve several purposes including being used with the BID Website as well as in a published format complete with a map of the new BID area. An additional use of this information would be to be used as an ad or insert in local and regional newspapers.

This Directory of goods and services will be distributed by the new BID organization as well as by the City. Local businesses will also be provided with copies of the Directory. The benefits of the Directory will be provided to all businesses on a no cost basis.

- Downtown Directory Of Goods and Services
- Consistent Advertising Pages in Local Publications
- "Shop Downtown Sunnyvale" Campaign

## **Program 2) Special Events and Activities**

The marketing program will also work toward development of a annual series of special events, fairs and festivals that are not necessarily retail-oriented, and in fact, may serve as successful program fund-raisers. This program of special events and street fair activities will be intended to focus public attention and patronage on the overall commercial district as well as on the overall community. This is especially important during the different construction phases in downtown Sunnyvale which will affect the main streets in and out of downtown.. Examples of these activities would include parades, festivals, fairs, seasonal events, markets, concerts, holiday themes and celebrations. Several special events and activities that are suggested for the approval of the BID membership are as follows:

- "A Taste of Sunnyvale", (A Food and Drink Fair/Fund-raiser)
- Downtown Jazz Festival
- Classic Movie Night
- Flea Markets
- Parades and Car Shows
- Historic Celebrations
- Ethnic Themes
- Restaurant Cooking Contests, Themes Nights, Chili Cookoffs, BBQs, Etc.

## **Program 3) Civic Beautification and Signage**

It is recommended the BID play the lead role in the planning and implementation of a Downtown civic beautification program. The purpose of this program would be the development of various appropriate commercial marketing-oriented civic beautification special effects projects.

- Twinkle Lights on Murphy Street Trees as well as Holiday Street Lighting
- Public Art Programs, Wall Murals, etc.
- Programs of Seasonal Decorations
- Downtown Information Kiosks

## **Program 4) Member Services**

- Management - Administration of all downtown programs
- Links to Website for Downtown Merchant
- Featured Monthly Business on Website
- Serving as Liaison with City Regarding Downtown Issues Such As Parking Problems and Enforcement and other Construction-related issues.