

**Council Meeting: April 21, 2009**

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 24, 2009, the City Council adopted a Resolution of Intention (ROI) to reauthorize the Downtown Sunnyvale Business Improvement District (BID). The Resolution established April 21, 2009 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. If protests do not exceed 50 percent, staff recommends that Council adopt the Resolution of Intention of the City of Sunnyvale to Levy an Annual Assessment reauthorizing the BID for FY 2009/2010 for Downtown Sunnyvale.

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 2009/2010 and a Resolution of Intention for reauthorization was adopted on March 24, 2009. Council approved Alternative 1 which states "Approve the BID Annual Report for FY 2008/2009 and adopt the Resolution of Intention and schedule a public hearing for April 21, 2009 to reauthorize the Business Improvement District for FY 2009/2010 for Downtown Sunnyvale".

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 business 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 Board 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 2009/2010, the BID's Board is recommending no changes in boundaries or the method and basis for levying the assessment (Attachment C).

If the Resolution of Intention to Levy an Annual Assessment and reauthorize the Downtown Sunnyvale Business Improvement District is adopted, the BID can 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 2009 for a July 1, 2009 activation date.

The Public Hearing provides the opportunity for protests to be heard. Protests may be filed in writing before or during the hearing or can be heard during the hearing. Once the Mayor closes the Public Hearing portion for the item, no further protests can be accepted. If a majority protest is not filed, the City Council may establish a BID for FY 2009/2010 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 2009/2010 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 150 businesses are located in the area bounded by Sunnyvale, Iowa, Mathilda and Evelyn Avenues.

As of March 31, 2009, the BID collected a total of \$27,200 in business assessments for FY 2008/2009. The uncollected amount of \$3,520, of which \$2,450 is for assessment fees and \$1,070 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 2008/2009 BID included:

- \$56,790 (revenue generated from special events)
- \$36,735 (event sponsorships)
- \$27,200 (BID assessment revenue)
- \$24,000 (Sand Hill Property Company Mitigation Funds)
- \$8,111 (Misc. Sources)
- \$152,836 BID budget for FY 2008/2009

The BID's FY 2009/2010 budget includes (Attachment C, page 1):

- \$32,060 revenue from the BID assessment
- \$57,000 (revenue from special events, such as the Summer Music Series)
- \$70,000 (construction mitigation from Sand Hill Property Company, projected sponsorships and other miscellaneous revenues)
- \$159,060 (projected budget for FY 2009/2010)

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 2009/2010 (Attachment D), the BID plans to:

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

FISCAL IMPACT

The reauthorization of the BID should support a positive fiscal benefit from continued business activity in the Downtown area. Businesses may be able to maintain their sales, thereby continuously generating sales tax revenue for the City. First and second quarter of FY 2007/2008 sales tax revenue generated within the BID area was approximately \$358,000. For the same period in FY 2008/2009, revenue totaled approximately \$190,000.

Staff time from the Department of Finance is provided at an estimated cost of \$2,800 annually, which is currently budgeted in the department's operations budget. Because these costs are reimbursed by the BID, there is no impact to the General Fund for providing this service.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

The Resolution of Intention adopted on March 24, 2009 was published in the legal ads section of the Sunnyvale Sun on April 8, 2009.

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:



Connie Verceles, Economic Development Manager, Office of the City Manager

Prepared by: Maria Rodriguez, Economic Development Specialist

Approved by:



Gary M. Luebbers
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 2008/2009
- C. Possible Annual BID Budget and Method and Basis for Levy
- D. Proposed Annual BID Programs

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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 2009-2010**

WHEREAS, on March 24, 2009, the City Council of the City of Sunnyvale (the "City") adopted Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District (Resolution No. 370-09) (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 21, 2009, 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 2009-2010 ("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 2009-2010.
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 2009-2010. If the assessment for any parcel remains delinquent at the time the assessments are submitted to the County for inclusion in the FY 2009-

Attachment A

2010 property tax roll, the delinquent FY 2008-2009 assessment payment and associated fines and penalties may be added to the FY 2009-2010 assessment obligation.

Adopted by the City Council at a regular meeting held on April 21, 2009, 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 26, 2009

TO: Mayor and City Council members
City of Sunnyvale

FROM: 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 July 1, 2008 through June 30, 2009.

Our start-up funding comes from the BID, which amounted to approximately \$25,000. Fiscal year 2007-08 the SDA staff and Board decided to use the monies to produce Murphy Avenue St. Patty's Day, The Summer Series, Holiday & Christmas Tree Lighting and the Sunnyvale Pet Parade. The production of these four events grossed \$78,000 from sales and sponsorships. After expenses for the year were subtracted the SDA netted \$7,000.

Present/For the Year

The Board approved the Executive Director's recommendation to remove St. Patty's Day, shelf Sunfest until 2010 and add Jazz Blues & Beyond Series and Cinema in The Plaza (subject to funding) events for 2009.

Event Revenue & Overview

For 2008, Summer Series averaged \$4,300.00 per week in event sales and netted the organization \$6,000. This series generates more revenue than any other event. The recent concern over starting the Murphy Ave. Streetscape project after the Summer Series was a testament to the economic vitality of the Summer Series. Our newest event addition was the Howl'oween Pet Parade. With sponsorship and support from the City of Sunnyvale, Sunnyvale Rotary and Kiwanis Club we managed to break even for the Howl'oween Pet Parade. Although the Howl'oween Pet Parade won't ever generate much income for the BID members it falls into our mission statement, "...to promote advocate and add vitality to downtown Sunnyvale." The Christmas Tree Lighting event has virtually no sales but results in a small profit due to corporate sponsorship and low city service fees.

Event Sponsorships

Despite the weakened economy we brought in record sponsorships again for 2008. Increase in sponsorship was attributed to staff diligence in finding new sponsor partners. Since 2009 has not been seen strong sponsorship along with increased city service fees, we decided not to produce St. Patty's this season. Staff will work diligently trying to secure the needed sponsorship dollars for our remaining fiscal event, which is The Summer Series. We will also continue to pursue funding for two new events: Jazz Blues & Beyond and Cinema in The Plaza. These events are tentative until we are able to acquire sponsorship.

Staff Salaries

In 2008, we expanded our staff to three, all being part-time positions. The positions are: Executive Director (ED), Event Coordinator and Promotion Director. The cost for three positions will be \$33,600.

Future

The BID Board strongly recommends that we continue the BID assessment. The BID serves 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 producing quality events and promoting downtown Sunnyvale. These events are especially important to continue to attract patrons to downtown during these tough economic times and the construction of Town Center and Murphy Avenue.

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

For fiscal July 2009 – 10 we plan on introducing The Big Easy Fest & Gumbo Cook-Off slated for March 2010. Budget details will not be available until around November 2009.

Overview

As you are aware we are living in tough economic times. It's during these tough times that we must create an even more attractive downtown for the community and its visitors; give the patron even more reasons to visit our downtown so that our existing businesses survive these harsh economic times. Now is the time to produce even more events, increase our marketing efforts through advertising and expand our website tools. We will be looking to partner with the City of Sunnyvale in the introduction of these new events and marketing efforts.

We are in desperate need of office/storage space. Our office is virtual therefore there are no office expenses presented on our report, but the needs of having a physical presence in our community is becoming more vital. In January of 2009, we lost our storage due to the demolition of Town & Country building 7. Obviously, this will change our bottom line but acquiring an office and storage space is crucial in order to properly serve our community. We are currently "in talks" with city staff looking at city owned vacant properties that may fill our needs.

Proposed projects are based on the proposed budget for 2009. Projects/events will be modified based on budget actuals as assessment payments and sponsorships are received.

Thank you for your support and once again please support our request to continue the BID for Downtown Sunnyvale.

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

ATTACHMENT C

Possible Annual BID Budget:

1) Income

Zone A: 45 businesses paying an average annual benefit fee of \$397.	\$17,900
Zone B: 20 businesses paying an average of \$220.	\$ 4,400
Zone C: 93 businesses paying an average of \$104.	\$ 9,760

Total potential BID annual collections	\$32,060
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Revenues from SDA special events and fund-raisers	\$57,000
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Construction Mitigation from Sand Hill Property Company, Grants, Event Sponsorships and other misc. revenue	\$ 70,000
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Total BID Program annual budget	\$159,060
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2) Expenditures

<u>Program</u>	<u>Amount</u>	<u>Percent</u>
1) Commercial Marketing Program	\$93,845	59%
a) Advertising and promotion		
b) Theme development		
c) Special events and activities		
d) Visitor attraction		
2) Civic Beautification and Signage Program	\$15,906	10%
a) Streetscape beautification, lighting		
b) Public arts programs		
c) Public-private directional signage		
3) Programs Administration and BID Management	\$49,309	31%
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Totals	\$159,060	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:

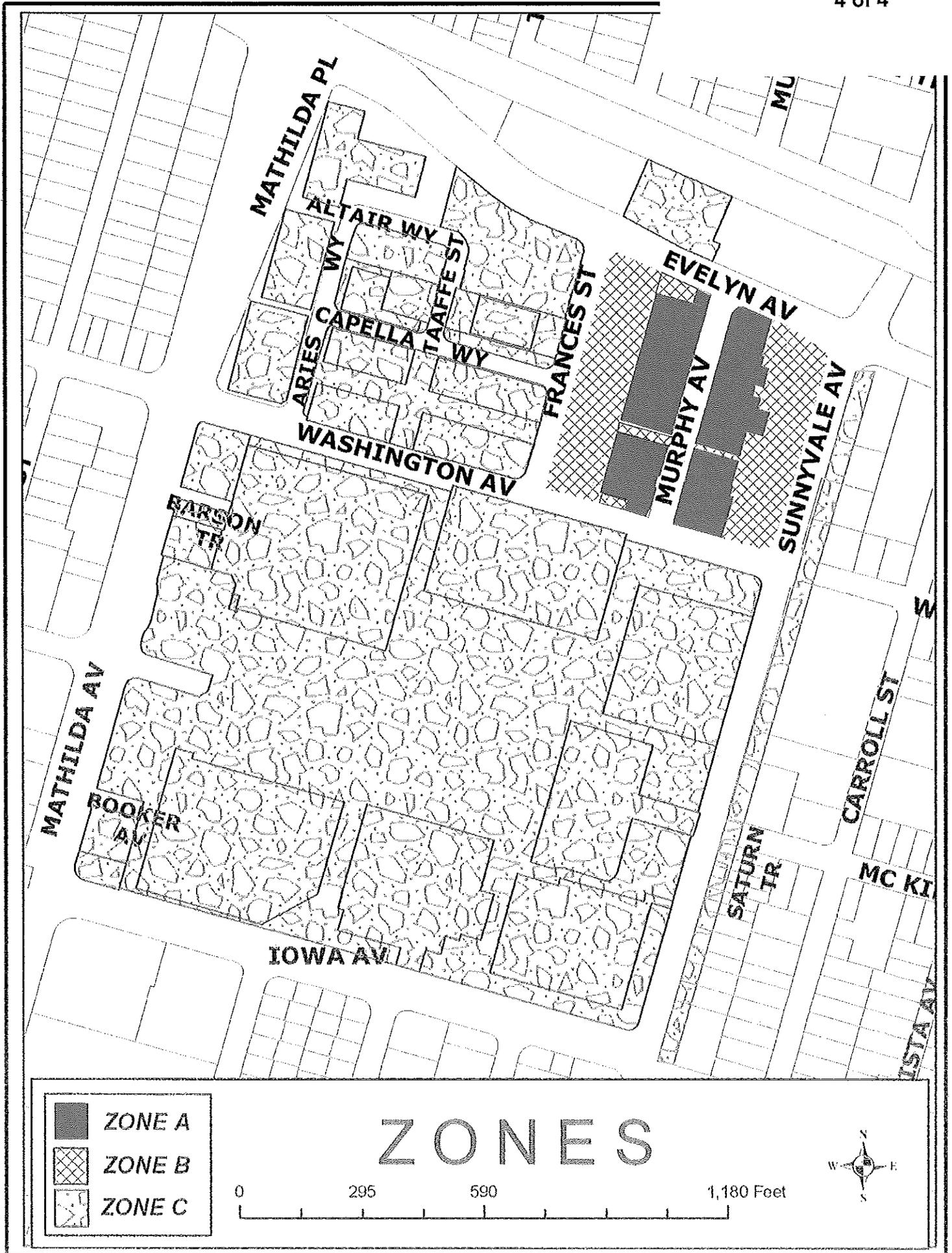
Retail and Restaurant: Businesses that buy and resell goods, examples are clothing stores, shoe stores, office supplies as well as businesses that sell prepared foods and drinks.

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.



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
- Cinema in the Plaza
- Print Media in local newspapers
- Downtown Sunnyvale Website

B) Possible Future BID Programs: 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 are 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:

- Jazz Blues and Beyond Series
- Cinema in The Plaza
- 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 and Enforcement and other Construction-related issues.