

**Council Meeting: May 11, 2010**

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

**REPORT IN BRIEF**

On April 6, 2010, the City Council adopted a Resolution of Intention (ROI) to reauthorize the Downtown Sunnyvale Business Improvement District (BID). The Resolution established May 11, 2010 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 the City of Sunnyvale to Levy an Annual Assessment reauthorizing the BID for FY 2009/2010 for Downtown Sunnyvale.

**BACKGROUND**

The Board of Directors (Board) of the BID requested a reauthorization for FY 2010/2011 and a Resolution of Intention for reauthorization was adopted on April 6, 2010. Council approved Alternative 1 which states "Approve the BID Annual Report for FY 2009/2010 and adopt the Resolution of Intention and schedule a public hearing for May 11, 2010 to reauthorize the Business Improvement District for FY 2010/2011 for Downtown Sunnyvale".

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 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**

If the Resolution of the City of Sunnyvale 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.

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 2010/2011 by adopting the attached Resolution of the City of Sunnyvale 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 2010/2011 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.

The BID's FY 2010/2011 budget includes (Attachment C, page 1):

- \$29,610 revenue from the BID assessment
- \$69,000 (revenue from special events, such as the Summer Music Series)
- \$39,500 (projected sponsorships and other miscellaneous revenues)
- \$138,110 (projected budget for FY 2010/2011)

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

The benefit assessment established for Sunnyvale businesses shall be billed and collected by July 1, 2010. Payments will be considered late if not received on or before the due date listed on the invoice. The business will accrue late fees for every 30 days delinquent after original due date. A 10% late penalty will be assessed to assessment amount for every 30 days payment is late. The penalty fees will be accrued for up to five months after original due date. If payment is not received after five months, the City will forward delinquent accounts to collections agency for further action. Once the business is assigned to the collections agency, additional fees will accrue.

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

- continue the special events (such as the Summer Music Series and the Jazz & Beyond),
- continue the marketing and promotion of Downtown Sunnyvale,
- maintain its website (*www.SunnyvaleDowntown.com*), and
- continue maintenance of the Murphy Avenue tree lights.

### **FISCAL IMPACT**

Staff time from the Department of Finance is provided at an estimated cost of \$2,200 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 #426-10 adopted on April 6, 2010 was published in the legal ads section of the Sunnyvale Sun on April 23, 2010.

### **ALTERNATIVES**

1. Adopt the Resolution of the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District.
2. Do not approve the Resolution 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 within the BID area. 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 the City of Sunnyvale to Levy an Annual Assessment For the Downtown Sunnyvale Business Improvement District
- B. BID Annual Report for FY 2009/2010
- C. Possible Annual BID Budget and Method and Basis for Levy
- D. Proposed Annual BID Programs

# **ATTACHMENT A**

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

**RESOLUTION OF THE CITY OF SUNNYVALE TO LEVY  
AN ANNUAL ASSESSMENT FOR THE DOWNTOWN  
BUSINESS IMPROVEMENT DISTRICT FOR FISCAL  
YEAR 2010-2011**

WHEREAS, on April 6, 2010, the City Council of the City of Sunnyvale (the "City") adopted Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District (Resolution No. 426-10) (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 May 11, 2010, 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 2010-2011 ("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 2010-2011.
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 by July 1, 2010. Payments will be considered late if not received on or before the due date listed on the invoice. The business will accrue late fees for every 30 days delinquent after original due date. A 10% late penalty will be assessed to

assessment amount for every 30 days payment is late. The penalty fees will be accrued for up to five months after original due date. If payment is not received after five months, the City will forward delinquent accounts to collections agency for further action. Once the business is assigned to the collections agency, additional fees will accrue.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, 2010, 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**

SDA ORGANIZATION EXPENSE & REVENUE		1/1/2009&10	2010/11	Notes & Comments
		Actual	Projected	Projected
<b>EXPENSES</b>				
	Advertising, Promotion & Marketing	\$ 20,615.00	\$ 5,000.00	
	Contract Labor	\$ 37,349.00	\$ 28,800.00	
	Events (costs directly associated with the event)			
	Jazz & Beyond	\$ 31,420.00	\$ 25,500.00	
	Murphy Ave Gumbo Fest			Tentative Event for FY 10/11
	St. Patrick's Day on Murphy Avenue			Tentative Event for FY 10/11
	Summer Music Series	\$ 55,921.00	\$ 56,000.00	
	Sunnyvale Plaza Outdoor Cinema			Tentative Event for FY 10/11
	Howloween Pet Parade & Faire	\$ 6,680.00	\$ 7,000.00	
	Holiday Christmas Tree Lighting	\$ 2,644.00	\$ 5,000.00	
	Insurance			
	General	\$ 2,662.00	\$ 2,662.00	
	Directors & Officers	\$ -	\$ -	
	Workman's Compensation	\$ -	\$ -	
	Legal & Accounting	\$ 1,956.00	\$ 1,956.00	
	Maintenance & Repair (incl murphy lights)	\$ 5,650.00	\$ -	
	Office Supplies	\$ 1,600.00	\$ 1,600.00	
	Printing & Reproduction	\$ -	\$ -	Event promos-costs included in event costs
	Rent (no location PO box)	\$ 112.00	\$ 112.00	
	Supplies (non office)	\$ 818.00	\$ 818.00	
	Taxes, Licenses & permits	\$ 30.00	\$ 30.00	Fees included in event costs
	Telephone/ Internet/Communications	\$ 840.00	\$ 840.00	
	<b>TOTAL EXPENSES</b>	<b>\$ 168,297.00</b>	<b>\$ 135,318.00</b>	
<b>REVENUE</b>				
<b>CONTRIBUTED &amp; SPONSORSHIP INCOME</b>				
	Grants			
	City/Government			
	Community Events Grant	\$ 11,500.00	\$ 11,500.00	
	Community Development Block Grant	\$ -	\$ -	
	Office of Economic Development	\$ -	\$ -	
	Corporate/Foundations			
	Mitigation	\$ 16,000.00	\$ -	
	Other	\$ -	\$ 10,000.00	council 10k for J&B
	<b>SUBTOTAL - GRANTS</b>	<b>\$ 27,500.00</b>	<b>\$ 21,500.00</b>	
	Projects & Events Sales (incl. vendors)			
	Jazz & Beyond	\$ 8,303.00	\$ 12,000.00	15k sponsorship 10k from city 5k from other
	Murphy Ave Gumbo Fest	\$ -	\$ -	Tentative Event for FY 10/11
	St. Patrick's Day on Murphy Avenue			Tentative Event for FY 10/11
	Summer Music Series	\$ 48,500.00	\$ 51,000.00	11k (5k from palo alto medical 1st national;
	Sunnyvale Downtown Cinema			Tentative Event for FY 10/11
	Howloween Pet Parade & Faire	\$ 2,000.00	\$ 6,000.00	5k from somebody + vendors
	Holiday Tree Lighting Celebration	\$ -	\$ -	5k from yahoo
	<b>SUBTOTAL - PROJECTS &amp; EVENTS</b>	<b>\$ 58,803.00</b>	<b>\$ 69,000.00</b>	
	SDA Memberships			
	BID Fees	\$ 25,873.00	\$ 29,610.00	
	<b>SUBTOTAL - SDA MEMBERSHIPS</b>	<b>\$ 25,873.00</b>	<b>\$ 29,610.00</b>	
	Additional Income			
	Sponsorships	\$ 19,000.00	\$ 18,000.00	pet parade, holiday, summer series
	<b>SUBTOTAL - ADDITIONAL INCOME</b>	<b>\$ 19,000.00</b>	<b>\$ 18,000.00</b>	
	<b>TOTAL REVENUE</b>	<b>\$ 131,176.00</b>	<b>\$ 138,110.00</b>	
	<b>NET PROFIT/LOSS</b>	<b>\$ (37,121.00)</b>	<b>\$ 2,792.00</b>	

# ATTACHMENT C

**Possible Annual BID Budget:**

## 1) Income

Zone A: 42 businesses paying an average annual benefit fee of \$393.	\$16,500
Zone B: 19 businesses paying an average of \$232.	\$ 4,400
Zone C: 82 businesses paying an average of \$106.	\$ 8,710
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Total potential BID annual collections	\$29,610
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Revenues from SDA special events and fund-raisers	\$69,000
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Grants, Event Sponsorships and other misc. revenue	\$39,500
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Total BID Program annual budget	\$138,110

## 2) Expenditures

<u>Program</u>	<u>Amount</u>	<u>Percent</u>
1) Commercial Marketing Program	\$81,485	59%
a) Advertising and promotion		
b) Theme development		
c) Special events and activities		
d) Visitor attraction		
2) Civic Beautification and Signage Program	\$13,811	10%
a) Streetscape beautification, lighting		
b) Public arts programs		
c) Public-private directional signage		
3) Programs Administration and BID Management	\$42,814	31%
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Totals	\$138,110	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:**

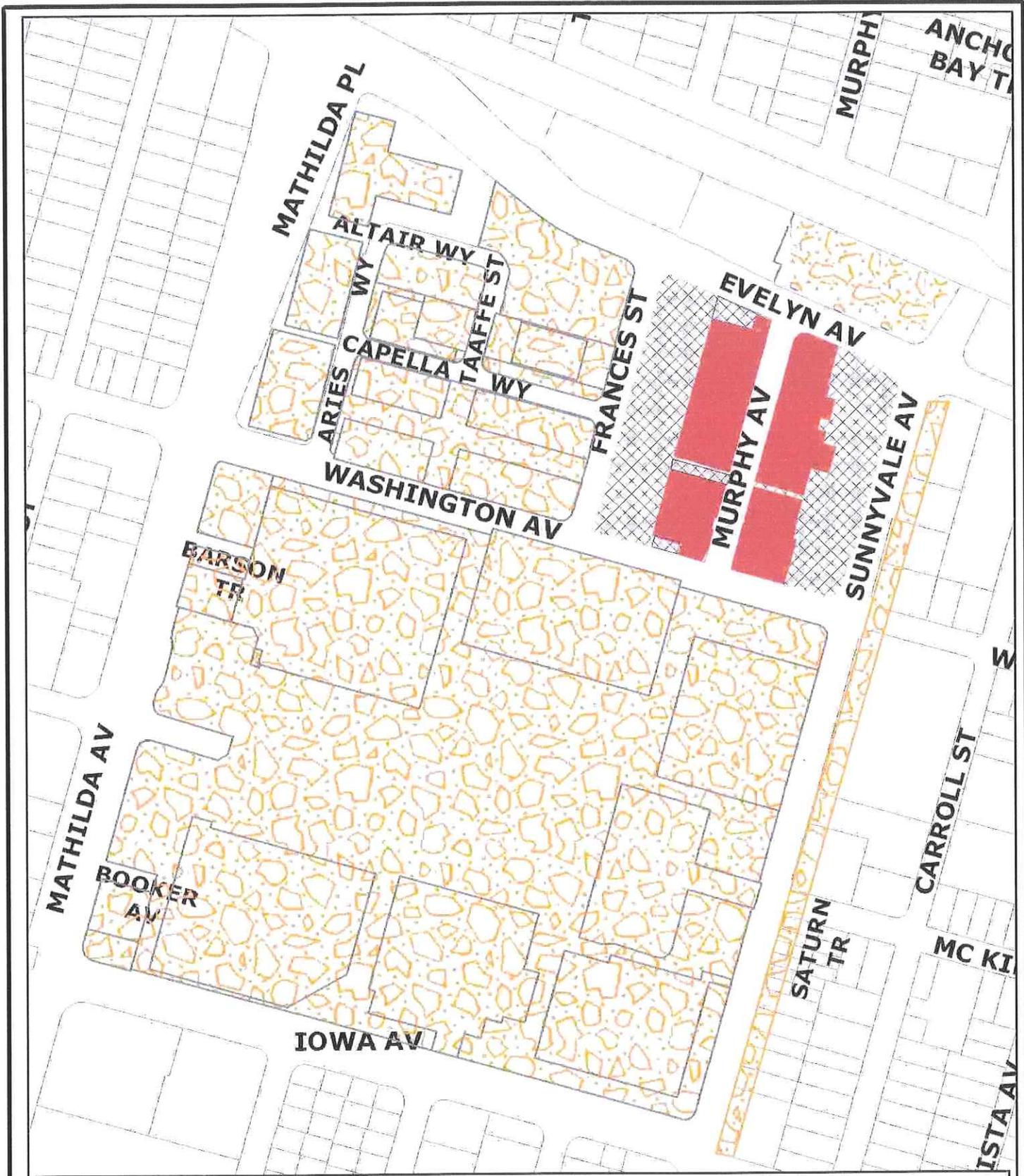
**Retail and Restaurant:** Businesses that buy and resell goods, examples are clothing stores, shoe stores, office supplies as well as businesses that sell prepared foods and drinks.

**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.

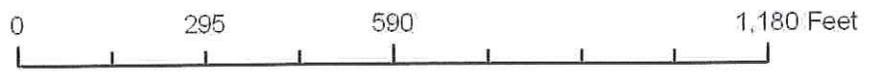
**Professional Services Businesses:** Includes Architects, Engineers, Attorneys, Dentists, Doctors, Accountants, Optometrists, Realtors, Insurance Offices, Mortgage Brokers and most other businesses that require advanced and/or specialized licenses and/or advanced academic degrees.

**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
- Jazz and Beyond
- Annual Holiday Tree Lighting
- 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 2010/2011 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.

The online business directory serves as a strong marketing tool for Downtown Sunnyvale. The directory serves 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 Business 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 an 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 has affected 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.