

**Council Meeting: May 10, 2011****SUBJECT: Conduct Public Hearing and Adoption of a City of Sunnyvale Resolution to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District****REPORT IN BRIEF**

On April 5, 2011, the City Council adopted a Resolution of Intention (ROI) to reauthorize the Downtown Sunnyvale Business Improvement District (BID). The ROI established May 10, 2011 as the date for a public hearing to consider BID renewal. The public hearing provides businesses within the proposed BID zones an opportunity to express their comments to City Council. City Council will hear and consider any and all protests against the renewal of the BID, and/or any protest regarding the proposed activities of the proposed BID. If, at the conclusion of the public hearing, businesses paying more than 50 percent of the total assessment file a protest, 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 Fiscal Year 2011/2012 for Downtown Sunnyvale.

BACKGROUND

On February 27, 2007, Council adopted an ordinance adding Chapter 3.60 to Title 3 of the Sunnyvale Municipal Code establishing a Downtown Sunnyvale Business Improvement District. Council has annually adopted the renewal of the BID since that time. Under state law, the BID must be renewed every year. There are approximately 130 businesses in the BID with a \$29,500 proposed BID assessment.

As part of the BID's annual renewal process, the BID board is required to prepare an annual report. The fiscal year 2010/2011 annual report was accepted at the April 5, 2011 City Council meeting and the legally mandated public hearing to consider levying the BID assessment for fiscal year 2011/2012 was set for the May 10, 2011 Council meeting. The May 10, 2011 public hearing is the second step in the two-step process to approve the BID assessment and operations for fiscal year 2011/2012.

A BID can only be reauthorized at the request of business owners. A BID cannot be reauthorized if businesses paying more than 50 percent 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 BID board, not the City. Current BID board members are Il Postale owner Joe Antuzzi, French Quarter owner Gary Hurd, Rok Bistro owner Steve Graham, Broadcom representative Kathy Johnson, Leigh's Favorite Books owner Leigh Odum, and SDA/BID Executive Director (non-voting member) Joel Wyrick.

The BID board considers the business type and location to determine the most equitable formula for each type of business. Assessments are levied on businesses on the basis of relative benefit from the funded activities. The City collects the assessment on an annual basis. All 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 BID board until the BID is funded.

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 fiscal year 2011/2012 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 BID board, as well as the time and manner of collecting the fees.

If protests are filed by business owners who would pay 50 percent or more of the proposed assessment, a BID cannot be reauthorized for fiscal year 2011/2012 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.

The benefit assessment established for Sunnyvale businesses shall be billed and collected by July 1, 2011. Payments will be considered late if not received on or before the due date listed on the invoice. Businesses will accrue late fees for every 30 days delinquent after original due date. A 10 percent late penalty will be added 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 a collections agency for further action. Once the business is assigned to the collections agency, additional fees will accrue.

FISCAL IMPACT

Staff time from the Department of Finance is provided at an estimated cost of \$2,500 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.

Adoption of this resolution to levy an annual assessment for the Downtown Sunnyvale Business Improvement District does not constitute City endorsement of the Sunnyvale Downtown Association's expense and revenue report (Exhibit A of Attachment B), nor does it obligate the City to incur any of the expenses projected by that report.

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 website.

As required by state law, Resolution of Intention #474-11 adopted on April 5, 2011 was mailed to all BID members and was also published in the legal ads section of the Sunnyvale Sun on April 22, 2011.

ALTERNATIVES

1. Adopt Resolution of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.
2. Do not approve 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 its work program for fiscal year 2011/2012. 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 percent or more from BID businesses, staff recommends that Council approve renewal of the BID.

Reviewed by:

Robert Walker, Assistant City Manager

Prepared by: Connie Verceles, Economic Development Manager

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 2010/2011
- C. Proposed Annual BID Budget and Method and Basis for Levy
- D. Proposed Annual BID Programs

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 5, 2011, 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 10, 2011, 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 2011-2012.
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, 2011. 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 _____, 2011, 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



March 1, 2011

TO: Mayor and City Council members
City of Sunnyvale

FROM: Joel Wyrick & The 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, 2010 through June 30, 2011 along with projections for the 2011/12 fiscal year.

Our start-up funding comes from the BID, which amounted to approximately \$28,197. For our 2010/11 fiscal year the SDA staff and Board decided to use the monies to produce The Summer Series, The Jazz & Beyond Series, Holiday & Christmas Tree Lighting and the Sunnyvale Pet Parade. The production of these four events grossed 101k from the sales, sponsorships and grants. Once the expenses for the year were subtracted the SDA broke even despite the fact that we lost our mitigation fees from Sand Hill due to the foreclosure.

Present/For the Year

The Board approved the Executive Director's annual budget and his recommendation to continue the same events produced last year for the upcoming 2011 year.

Event Revenue & Overview

For 2010, Summer Series for the first time in years actually lost a little money. The Jazz & Beyond series lost money too although this was anticipated. Despite the continual loss we will continue the event because... simply put, there is nothing else out there like it. We feel in the long run that J&B will become a signature event. It also adds revenue generating properties to our "food based" BID members. The Howl'oween Pet Parade continues to be our community collaborative event between the Sunnyvale Chamber, Rotary, Kiwanis Club, businesses outside of the BID and neighborhood associations. 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." As in years past The Christmas Tree Lighting has no sales associated with the event but turns a profit due to very little City service fees attached to the event and good sponsorship support. We plan on adding a new event to our calendar, The Sunnyvale Downtown Wine & Food Stroll. This event has the capacity to involve BID members outside of Murphy Avenue including Block 18 when fully developed. We also plan to bring back St. Patty's Day on Murphy Avenue.

Event Sponsorships

Once again, Despite the continued weakened economy the staff was able to secure strong sponsorships for last year's events. We hope to have an even year as we continually foster new business partnerships with the likes of Nokia, Broadcom and BRE.

Staff Salaries

In 2010, the SDA cut staff from three to two part-time positions. The positions are: Executive Director (ED) and Event Coordinator. For 2011, we will maintain our staffing as it was in 2010.

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 as a good place to visit, shop and do business. These events are especially important to continue to attract patrons to downtown during these tough economic times as well as the continued construction of the Town Center and Town and Country Center.

Commercial marketing and promotion will continue. Resources for marketing will include local and regional publications. Maintenance of the SunnyvaleDowntown.com site will continue in order to maintain an internet presence.

For fiscal year 2011/12 we plan on re-introducing St. Patty's Day on Murphy Avenue and the Sunnyvale Downtown Wine & Food Stroll.

Overview

During the course of the year I have spoken to many other downtown associations in the bay area. I am proud to say arguably we are the most productive downtown association of those I have talked to. Considering the seed money we start associations are quite surprised with our efficiency and the amount of events and services we provide our BID members. We continually seek out ways to 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. As always, we will be looking to partner with the City of Sunnyvale and other organizations to continue marketing downtown Sunnyvale.

We look forward to working with the new developer and hope that the City includes the SDA in its dialogue. The SDA strongly believes that mitigation fees should be part of this dialogue and be re-instituted as soon as a new developer takes over the project. Block 18 is paramount in the making a vibrant downtown Sunnyvale and allowing the SDA to be part of the process would only make it an even better place to live, work and play.

Proposed projects are based on the proposed budget for 2011. Projects/events will be modified based on budget actuals as assessments are made and sponsorships are received.

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

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

SDA ORGANIZATION EXPENSE & REVENUE				1/1/2009&10	2010/11	Notes & Comments
				Actual	Projected	Projected
EXPENSES						
		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
		Howl'oween 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	
TOTAL EXPENSES				\$ 168,297.00	\$ 135,318.00	
REVENUE						
CONTRIBUTED & SPONSORSHIP INCOME						
		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
SUBTOTAL - GRANTS				\$ 27,500.00	\$ 21,500.00	
		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
		Howl'oween Pet Parade & Faire		\$ 2,000.00	\$ 6,000.00	5k from somebody + vendors
		Holiday Tree Lighting Celebration		\$ -	\$ -	5k from yahoo
SUBTOTAL - PROJECTS & EVENTS				\$ 58,803.00	\$ 69,000.00	
		SDA Memberships				
		BID Fees		\$ 25,873.00	\$ 29,610.00	
SUBTOTAL - SDA MEMBERSHIPS				\$ 25,873.00	\$ 29,610.00	
		Additional Income				
		Sponsorships		\$ 19,000.00	\$ 18,000.00	pet parade, holiday, summer series
SUBTOTAL - ADDITIONAL INCOME				\$ 19,000.00	\$ 18,000.00	
TOTAL REVENUE				\$ 131,176.00	\$ 138,110.00	
NET PROFIT/LOSS				\$ (37,121.00)	\$ 2,792.00	

Possible Annual BID Budget:

1) Income

Zone A: 38 businesses paying an average annual benefit fee of \$458.	\$17,400
Zone B: 11 businesses paying an average of \$200.	\$ 2,200
Zone C: 80 businesses paying an average of \$124.	\$ 9,910
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Total potential BID annual collections	\$29,510
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Revenues from SDA special events and fund-raisers	\$90,000
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Grants, Event Sponsorships and other misc. revenue	\$11,500
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Total BID Program annual budget	\$131,010

2) Expenditures

<u>Program</u>	<u>Amount</u>	<u>Percent</u>
1) Commercial Marketing Program	\$110,580	79%
a) Advertising and promotion		
b) Theme development		
c) Special events and activities		
d) Visitor attraction		
2) Civic Beautification and Signage Program	\$1,250	1%
a) Streetscape beautification, lighting		
b) Public-private directional signage		
<i>(About 4% of projected assessments to be collected)</i>		
3) Programs Administration and BID Management	\$28,800	20%
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Totals	\$140,630	100%

(Figures rounded to nearest whole number)

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.

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
- Howl'oween Pet Parade
- 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.

Several of these new and continued programs for Fiscal Year 2011/2012 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 providing links to merchant Websites.

- 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 work towards 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.

Examples of these activities would include parades, festivals, fairs, seasonal events, markets, concerts, holiday themes and celebrations. Added special events and activities that are suggested for the approval of the BID membership are as follows:

- St. Patty's Day on Murphy Avenue
- Sunnyvale Downtown Wine & Food Stroll
- Salsa Festival.

Program 3) Civic Beautification and Signage

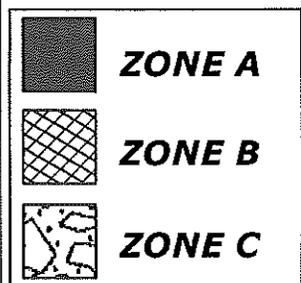
It is recommended the BID play the lead role in the planning and implementation of a Downtown civic beautification program. The purpose of this program would be the development of various appropriate commercial marketing-oriented civic beautification special effects projects.

- Twinkle Lights on Murphy Street Trees as well as Holiday Street Lighting
- Programs of Seasonal Decorations
- Downtown Information Kiosks (TFN)

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.

All listed programs are items of interest for the BID. Programs completed will be based on staff availability, schedules and actual BID budget.



ZONES

