REPORT TO MAYOR AND COUNCIL **NO: 12-128**

Council Meeting: May 22, 2012

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

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 $27,000 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 2011/2012 annual report (Attachment A – Exhibit B) was accepted at the April 24, 2012 City Council meeting and the legally mandated public hearing to consider levying the BID assessment for fiscal year 2012/2013 was set for tonight's Council meeting.

A BID can only be reauthorized at the request of business owners. A BID cannot be reauthorized if businesses paying 50 percent or more 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. The current Board members are:

- Joe Antuzzi, Il Postale Restaurant
- Gary Hurd, French Quarter
- Johnny Sevey, Rok Bistro
- Kathy Johnson, Broadcom
- Leigh Odum, Leigh's Favorite Books
- Gary Gold, Dr. Gold's Eyes
- Joel Wyrick, SDA/BID Executive Director (non-voting member)

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.

On April 24, 2012, Council also directed staff to provide $10,000 in additional financial support. The City will issue this payment with the BID's first reimbursement payment in fiscal year 2012/2013.

EXISTING POLICY

Municipal Code Section 3.60.110 – Downtown Business Improvement District, Annual Budget Process.

Land Use and Transportation Element
Policy LT-7.4 Create a strong, identifiable central business district that provide regional and citywide shopping opportunities.

DISCUSSION

If the Resolution of the City of Sunnyvale to Levy an Annual Assessment and Reauthorize the Downtown Sunnyvale Business Improvement District (Attachment A) 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 2012/2013 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 2012/2013 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, 2012. 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 the 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 BID's budget (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 number 531-12 adopted on April 24, 2012 was mailed to all BID members and was also published in the legal ads section of the Sunnyvale Sun on May 4, 2012.

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.

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 for Fiscal Year 2012/2013
B. Proposed Annual BID Budget

ATTACHMENT A

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF SUNNYVALE TO LEVY AN ANNUAL ASSESSMENT FOR THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2012-2013

WHEREAS, on April 24, 2012, the City Council of the City of Sunnyvale (the "City") adopted Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District (Resolution No. 531-12) (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 22, 2012, 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 2011-2012 (Exhibit B).

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 (Exhibit A).

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 2012-2013 (Exhibit B).

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, 2012 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 Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

_____

, City Attorney

.

Proposed Annual BID Benefit Fee Schedule

	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:

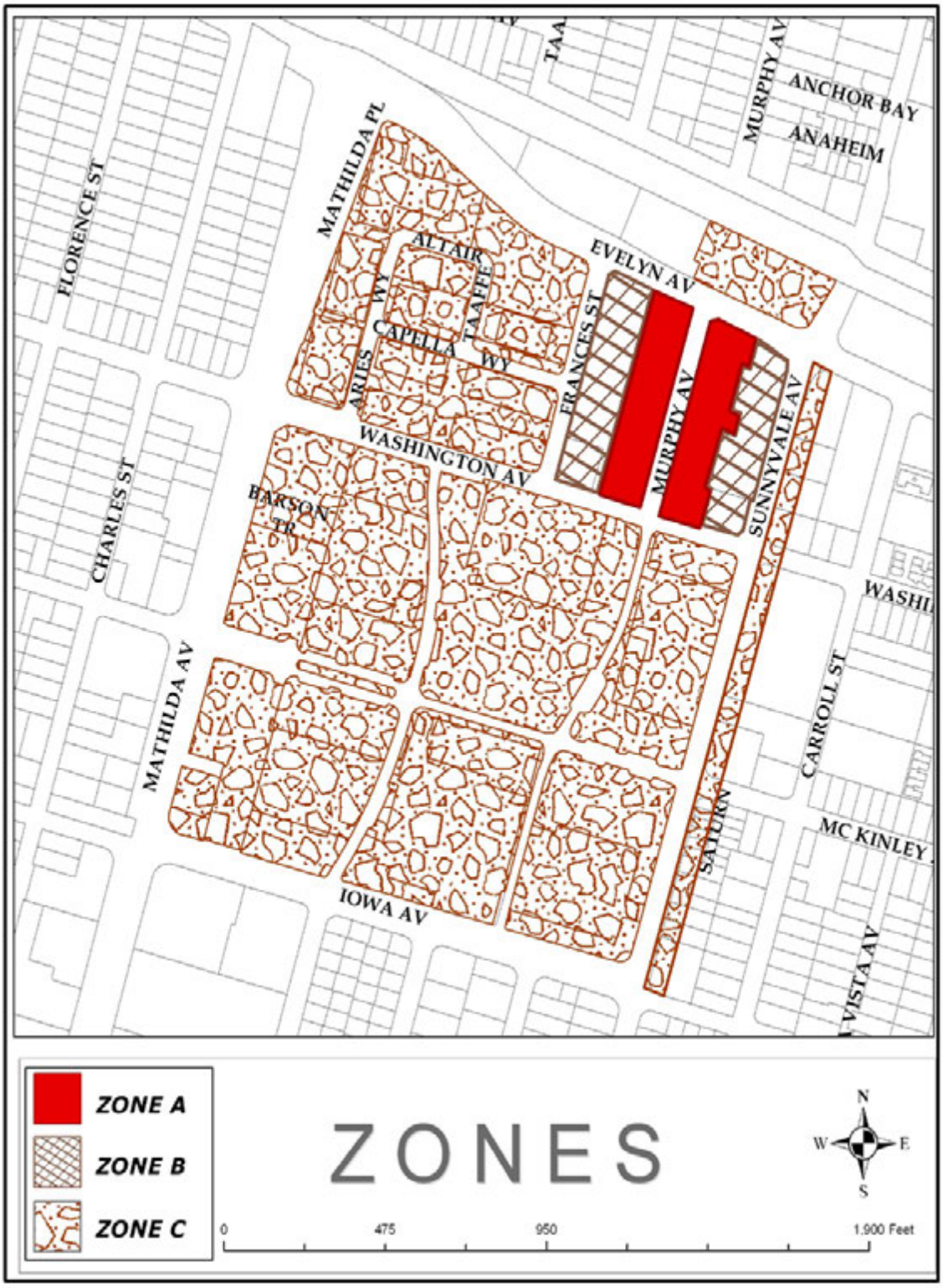
Retail and Restaurant: Businesses that buy and resell goods, examples are clothing stores, shoe stores, office supplies as well as businesses that sell prepared foods and drinks.

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.


ANCHOR BAY
ANAHEIM
MURPHY AV
MATHILDA PL
FLORENCE ST
ALTAIR
EVELYN AV
WY
TAAFFE
CAPELLA
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ARIES
FRANCES ST
MURPHY AV
SUNNYVALE AV
WASHINGTON AV
BARSON
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CHARLES ST
CARROLL ST
MATHILDA AV
SATURN
MC KINLEY
IOWA AV
VISTA AV
ZONE A
ZONE B
ZONE C
ZONES
N
W
E
S
0
475
950
1,900 Feet

March 1, 2012

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,

On March 7, 2012 the Board of Director's approved the renewal of the BID. Attached (Exhibit A) is a copy of the SDA's expense & revenue report for July 1, 2011 through June 30, 2012 along with projections for the 2012/13 fiscal year.

Past

Our start-up funding comes from the BID, which amounted to approximately $28,197. For our 2012/13 fiscal year the SDA staff and Board decided to use the monies to produce The Magic of Sunnyvale Wine Stroll, Summer Series Music + Market, The Jazz & Beyond Series, Howl'oween Pet Parade and the Holiday & Christmas Tree Lighting. The production of last year's events grossed 106k from the sales, sponsorships and grants.

Present/For the Year

The Board approved the Executive Director's annual budget and his recommendations for the upcoming 2012 year.

Event Revenue & Overview
For 2011, all events with exception of the Jazz & Beyond Series stayed within budget. The Jazz & Beyond series lost money due to a communication between the SDA, public safety and the City that has been rectified for this upcoming year. The Howl'oween Pet Parade did not occur in 2011 and we plan to bring it back if the budget permits. The 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. Our new event for 2011 The Magic of Sunnyvale Downtown Wine & Food Stroll was a surprising success! With the upcoming development of the former Town Center and Town and Country sites we as an organization need to focus our marketing efforts to include activities not just on Murphy Avenue. This event has an inherent component to involve BID members outside of 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 Apple, Nokia, Carmel Properties as well as continued support from Broadcom, Palo Alto Medical Foundation and BRE.

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.

As we know, the BID is a self-imposed tax of the downtown businesses. Outside of paying their standard fees, taxes and licenses associated with owning and operating a business these businesses have been and continue reach into their pockets and come up with additional monies to: promote market and create events for the City of Sunnyvale and our community. As we look to the future we need to prepare to be able to handle the difficult task of competing with the likes of Santana Rows and other downtowns. In order to compete now and the future we ask that the city council consider matching the contribution made by the businesses. There are two fundamental reasons why. One, most of our events should be City partnered events. We are one of the few cities who doesn't partner or produce large community events for their downtown community. History has shown that the SDA can produce events at a fraction of the cost of what the City would have to pay and still provide a safe quality event. Of course, the City would have direct input and final approval on where or what their contribution will be used for. Secondly, these matching dollars will enable us to compete with the other communities by producing yearlong quality events, retain quality staff and market our city/downtown through our website and visitors guide.

All of the marketing, events and activities produced by the SDA is a direct reflection of our City we need the city of Sunnyvale to be a fiscal partner. Of course should the businesses decide to no longer pay into the BID the city shouldn't either.

The last remaining piece to the BID would be the expansion of the BID footprint to include the eastside of Mathilda and the south side of Iowa. We feel this would be a logical move to include both sides of the street like we do for Evelyn Avenue and Sunnyvale Road.

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.

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.

We look forward to working with the new developer (of the former Town Center site) 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 2012. 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.

ATTACHMENT B

SDA ORGANIZATION EXPENSE & REVENUE F	2011-12	2012-13	Notes & Comments
	Actual	Projected	Projected
EXPENSES			
Advertising, Promotion & Marketing	$ -	$ 5,000.00	Visitor's Guide
Commissions & Fees (memberships, etc.)	$ -	$ -	
Conferences, meetings & seminars (attended)	$ -	$ -	
Contract Labor	$ 28,800.00	$ 39,600.00	
Dues/Subscriptions/Contributions	$ -	$ -	
Employee Health Benefits	$ -	$ -	
Events (costs directly associated with the event)			
Magic of Sunnyvale Wine & Food Stroll	$ 10,554.68	$ 11,000.00	
Summer Series Music + Market	$ 45,537.92	$ 48,000.00	
Jazz & Beyond	$ 27,342.57	$ 22,000.00	
Howl'oween Pet Parade & Faire	$ -	$ 7,000.00	
Holiday Christmas Tree Lighting	$ 6,944.69	$ 8,000.00	
Sunnyvale Downtown Cinema			subject to funding
Finance Services Charges		$ -	
Insurance			
General	$ 2,786.42	$ 3,000.00	
Directors & Officers	$ -	$ -	
Workman's Compensation	$ -	$ -	
Janitorial & Cleaning	$ -	$ -	
Legal & Accounting	$ 496.00	$ 500.00	
Audit	$ -	$ -	
Legal	$ -	$ -	
Maintenance, Beautification & Repair (incl murphy lights)	$ -	$ 1,250.00	
Office Supplies	$ 50.00	$ 250.00	
Payroll Taxes	$ -	$ -	
Postage	$ -	$ -	billed to indvidual projects
Printing & Reproduction	$ -	$ -	billed to indvidual projects
Purchases	$ -	$ -	
Rent	$ 2,409.69	$ 12,000.00	(no office 2012 - PO box & Pod)
Staff Salaries		$ -	none we subcontract everything
Supplies (non office)	$ -	$ 250.00	
Taxes, Licenses & permits)	$ 30.00	$ 100.00	
Telephone/ Internet/Website	$ 1,260.00	$ 1,300.00	
Travel & Entertainment	$ 580.00	$ 600.00	
Utilities	$ -	$ -	
TOTAL EXPENSES	**$ 126,791.97**	**$ 159,850.00**	
REVENUE			
CONTRIBUTED & SPONSORSHIP INCOME			
Grants			
City/Government			
Community Events Grant	$ -	$ -	
Community Development Block Grant	$ -	$ -	
Matching BID	$ -	$ 27,000.00	
Corporate/Foundations			
Mitigation	$ -	$ -	
Other			
SUBTOTAL - GRANTS	**$ -**	**$ 27,000.00**	
Projects & Events Sales (incl. vendors)			
Magic of Sunnyvale Wine Stroll	$ 22,694.00	$ 23,000.00	

	Summer Series Music + Market	$ 55,886.00	$ 56,000.00	
	Jazz & Beyond	$ 20,453.00	$ 21,000.00	
	Howl'oween Pet Parade & Faire	$ -	$ 5,000.00	
	Holiday Tree Lighting Celebration	$ 7,400.00	$ 7,500.00	
SUBTOTAL - PROJECTS & EVENTS		**$ 106,433.00**	**$ 112,500.00**	revenue includes sponsorships
SDA Memberships				
	BID Fees	$ 26,231.34	$ 27,000.00	
SUBTOTAL - SDA MEMBERSHIPS		**$ 26,231.34**	**$ 27,000.00**	
TOTAL REVENUE		**$ 132,664.34**	**$ 166,500.00**	
NET PROFIT/LOSS		**$ 5,872.37**	**$ 6,650.00**	