




Office of the City Manager

PUBLIC HEARING
September 18, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Michael Caplan, Director, Office of Economic Development
Subject: Establishment of the Berkeley Tourism Business Improvement District

RECOMMENDATION

Conduct a public hearing on the establishment of the Berkeley Tourism Business Improvement District (BTBID or “the District”), and upon conclusion if no majority protest exists after tabulation of assessment ballots, adopt two Resolutions:

1. Establishing the BTBID for the five-year period beginning November 1, 2012 and ending October 31, 2017.
2. Authorizing the City Manager to execute a sole source contract and any amendments with the Visit Berkeley (VB) for \$375,000 of BTBID funds to support tourism marketing and promotion for the period November 1, 2012 to October 31, 2017.

FISCAL IMPACTS OF RECOMMENDATION

The proposed BTBID would place a 1% assessment on short-term (30 days or less) room rental revenue at all Berkeley hotels and motels with five (5) or more rooms as defined in the Berkeley Municipal Code section 7.36.020.A. Based on the short-term room rental revenues for FY 2011, staff estimates that the assessment would raise approximately \$375,000 in the first year. If established, the BTBID would be in effect for five years and the total assessment amounts would vary each year based on the revenue generated by hotel short-term room rental.

If approved, a special revenue fund would need to be created and the assessment would be collected from the businesses by the City concurrently with transient occupancy taxes. The City’s Office of Economic Development would contract with Visit Berkeley (the designated Owners’ Association of the District) to provide services with the BTBID funds collected. The Management District Plan designates that the funds would be used for marketing, promotion, special event sponsorship and other specific hotel-serving activities. One percent (1%) of the funds would be retained by the City for its services in collecting the assessments and contracting for the BTBID services.

Because the BTBID programs are designed to bring more visitors to the City, the program should result in an increase in transient occupancy tax collections. There may also be an increase in sales tax as an indirect result of higher hotel occupancies

CURRENT SITUATION AND ITS EFFECTS

California Streets and Highway Code Section 36623 requires specific actions to create the proposed BTBID. On July 17, 2012 Council adopted Resolution No. 65,846–N.S., which stated the intention to establish the Berkeley Tourism Business Improvement District and directed the City Clerk to schedule a *public meeting* on September 11, 2012 and a *public hearing* on September 18, 2012 to consider the establishment of the District. The public *meeting* was held on September 11, 2012. If at the time of the public hearing, September 18, 2012, written protests have not been received from businesses that will pay more than fifty percent of the proposed assessment valuation, the Council can adopt a resolution forming the district.

BACKGROUND

Berkeley's tourism industry generates an annual average of nearly \$3.5 million dollars in tax revenue to the City and represents about 3% of the General Fund. This revenue comes from a 12% Transient Occupancy Tax (TOT) on visitor stays of less than 30 days. The City of Berkeley receives 100% of this revenue (unlike the sales tax of 8.75% which directs only 1% to our General Fund). While TOT revenue declined from 2009-2010 at the height of the Great Recession, from 2010-2011 TOT revenue grew by 14%.

In the fall of 2011, Barbara Hillman, Executive Director of Visit Berkeley, in collaboration with leaders in the hotel sector, began investigating the establishment of a Tourism Improvement District (TID). A TID is a special purpose Business Improvement District focused on the hotel sector. TIDs are formed by a local city government at the request of hotels and motels which stand to benefit from joint marketing and promotion activities. Visit Berkeley contracted with Civitas, a consultancy specializing in advising business leaders on Business Improvement District formation. With the assistance of Civitas, Visit Berkeley began outreach to hotel owners at the end of 2011 and the beginning of 2012. Outreach included educating hotel owners and operators about the nature of TIDs and the specifics of the proposed BTBID. In California more than 50 communities have established TIDs. At least eight (8) of those are located in the Bay Area (including San Francisco, San Jose and Santa Clara, Vallejo and Tiburon).

In June of this year, Visit Berkeley presented the City Clerk with signed petitions representing over 85% of the assessed valuation of the proposed BTBID participants. Since the petitions represented more than 50% of the assessed valuation, the BTBID establishment process could begin. On July 17, 2012 Council passed the Resolution of Intention to Establish the Berkeley Tourism Business Improvement District and established dates for the required public meeting and public hearing needed prior to the final Resolution of confirmation. In September 11, 2012, Council held a *Public Meeting* where the establishment of the BTBID could be discussed. Tonight's *Public Hearing* is the last procedural step necessary for the Council to be able to approve and implement the BTBID.

RATIONALE FOR RECOMMENDATION

The BTBID will raise \$375,000 in private funds for tourism promotions that assist Berkeley hotels and motels. The administrative costs of collecting this revenue will be paid for out of the funds raised. This effort will build on Berkeley's success as a visitor destination and have positive economic benefit to the City.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions are considered.

CONTACT PERSON

Jennifer Cogley, Sustainable Business Coordinator, Office of Economic Development,
510-981-7532

Attachments:

- 1: Resolution: Establishing the Berkeley Tourism Business Improvement District
Exhibit A: Management District Plan
- 2: Resolution: Contract with Visit Berkeley
- 3: Base Level Services Letter
- 4: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

DECLARING RESULTS OF MAJORITY PROTEST PROCEEDINGS AND ESTABLISHING THE BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes cities and counties to establish property and business improvement districts upon petition by a weighted majority of the hotel business owners located within the boundaries of the district; and

WHEREAS, hotel owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by each owner, within the boundaries of the Berkeley Tourism Business Improvement District ("BTBID") have petitioned the City Council to establish the BTBID; and

WHEREAS, included with the petitions was a Management District Plan summary that describes the proposed assessment to be levied on lodging businesses within the BTBID to pay for sales promotion and marketing activities, and other activities set forth in the Management District Plan; and

WHEREAS, the assessed hotel businesses within the BTBID will be benefited by the activities and improvements set forth in the Management District Plan; and

WHEREAS, on July 17, 2012, at 2134 Martin Luther King Jr. Way, Berkeley, California, the City Council adopted a Resolution of Intention to Create the BTBID, Resolution No. 65,846-N.S.; and.

WHEREAS, the public meeting and public hearing to consider the establishment of the BTBID have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on September 11, 2012, at 2134 Martin Luther King Jr. Way, Berkeley, California, the City Council held a public meeting regarding the establishment of the BTBID, and the City Council heard and received objections and protests, if any, to the establishment of the BTBID and the levy of the proposed assessment; and

WHEREAS, on September 18, 2012, at 2134 Martin Luther King Jr. Way, Berkeley, California, the City Council held a public hearing regarding the establishment of the BTBID, and the City Council heard and received all objections and protests, if any, to the establishment of the BTBID and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.

2. The Berkeley Tourism Business Improvement District is hereby established for a five (5) year term.

3. The assessments levied for the BTBID shall be applied towards sales, promotions and marketing programs to market Berkeley hotel businesses as tourist, meeting and event destinations, and other activities as set forth in the Management District Plan.

4. The revenue from the levy of the assessments on hotel businesses within the BTBID may not be used to provide for activities or improvements outside the BTBID or for any purpose other than those specified herein, in the Management District Plan, and in the Resolution of Intention.

5. Assessments levied on hotel businesses pursuant to this resolution shall be levied on the basis of special and specific benefit. Because the services provided are intended to increase short term hotel room rentals, an assessment based on short term room rentals is the best measure of benefit.

6. The amount of assessment, if passed on to each transient, shall be disclosed in advance, separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business.

7. The assessments for the entire District will total approximately \$375,000 in year one.

8. The activities and improvements set forth will be funded by the levy of an assessment on lodging businesses within the BTBID as described in the Management District Plan that is on file with the City Clerk.

9. Bonds shall not be issued to fund the BTBID.

10. The boundaries of the BTBID shall be the boundaries of the City of Berkeley as shown in the map included on page five (5) in the Management District Plan incorporated herein as Exhibit A.

11. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the BTBID assessment is levied as long as they are used consistent with the requirements set forth herein.

12. The assessments to fund the activities and improvements for the BTBID will be collected at the same time and in the same manner as are transient occupancy taxes, and in accordance with Streets and Highways Code §36631.

13. Visit Berkeley shall be the Owners Association pursuant to Streets and Highways Code §36614.5, provided that nothing in this resolution prohibits the City from designating or creating a different Owners Association.

14. Visit Berkeley, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the district.

15. The BTBID established pursuant to this resolution will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

16. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the establishment of the BTBID and to levy the assessments.

17. The City Clerk is directed to record in the Alameda County Recorder's Office a notice and assessment diagram, as required by Streets and Highways Code §36627. The text of the recorded notice shall state that the assessment is levied only against hotel businesses within the area of the BTBID.

18. This Resolution shall take effect immediately upon its adoption by the City Council.

Exhibits

A: Management District Plan

RESOLUTION NO. ##,###-N.S.

CONTRACT: VISIT BERKELEY TO IMPLEMENT THE BERKELEY TOURISM
BUSINESS IMPROVEMENT DISTRICT

WHEREAS, Visit Berkeley (VB) has proven to be an effective partner with the City of Berkeley in implementing hotel and tourism marketing and promotions; and

WHEREAS, VB is the one private sector organization that is taking comprehensive action to improve the economic vitality of the hotel sector across Berkeley, as reflected in VB's efforts to form the newly established Berkeley Tourism Business Improvement District; and

WHEREAS, VB has for twenty one years worked to support the hotel and tourism sector in Berkeley; and

WHEREAS, on September 18, 2012, the City Council held a public hearing, after which it adopted a resolution establishing the Berkeley Tourism Business Improvement District (BTBID) starting November 1, 2012 and ending October 31, 2017 and levying an assessment to be collected on a monthly basis.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a sole source contract and any amendments with Visit Berkeley in the amount of \$375,000 for the purpose of implementation of the BTBID. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

BERKELEY TOURISM BUSINESS IMPROVEMENT DISTRICT

The Office of Economic Development is proposing to establish the Berkeley Tourism Business Improvement District.

The hearing will be held on SEPTEMBER 18, 2012 at 7:00 p.m. in the City Council chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **September 6, 2012**.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Comments received no later than Tuesday, September 4, 2012 will be included in Council agenda packets. Communications received after that date through Tuesday, September 11, 2012 will be distributed as supplemental communications on Thursday, September 13, 2012. Comments received thereafter will be submitted to Council as supplemental communications at the meeting. For further information, contact Mark Numainville, CMC, Acting City Clerk, 981-6900. FAX: (510) 981-6901. TDD: (510) 981-6903.

For further information, please contact Jennifer Cogley at 510-981-7532.

Published: Mailed to business owners of record per:
California Streets and Highway Code 36623 and California Government Code 54954.6

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 6, 2012.



Mark Numainville, CMC, Acting City Clerk