



Office of the City Manager

ACTION CALENDAR
December 11, 2012

To: Honorable Mayor and Members of the City Council
From: Solano Avenue Business Improvement District Advisory Board
Submitted by: Amy Thomas, Chairperson, Solano Business Improvement District Advisory Board
Subject: Public Hearing and Levying of Assessments in the Solano Avenue Business Improvement District for 2013

RECOMMENDATION

Conduct a public hearing and, upon conclusion:

1. Adopt a Resolution confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, “the District”) for 2013 and, if no majority protest exists, levy annual assessments in the area for calendar year 2013 to finance improvements in the District; and
2. Adopt a Resolution authorizing the City Manager to enter into a contract with Livable Berkeley for disbursement of District funds for purposes outlined in the Annual Report and Budget and adding an additional purpose for expenditures.

FISCAL IMPACTS OF RECOMMENDATION

Projected revenue of approximately \$35,000 will be collected in the Solano Avenue BID Fund (revenue budget code 474-8703-370-5001) and expended from budget code 474-8703-465-3510 for 2013. The FY 2013 Adopted Budget contains budget amounts of \$35,000 in both revenue and expenditure codes. The BID is also carrying over approximately \$17,000 in unexpended calendar year 2012 revenue. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Solano Avenue Business District Advisory Board (hereafter “Solano BID Advisory Board” or “the Advisory Board”). To the extent that the work of the Solano BID enhances the business climate on Solano over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

The contract with Livable Berkeley has been entered into the City’s contract management database and assigned CMS No. B6H77

CURRENT SITUATION AND ITS EFFECTS

State Law (Parking and Business Improvement Area Law of 1989, *Streets and Highways Code* para. 36500 *et. seq.*) requires a public hearing on the proposed renewal of the assessment for the coming year.

Since January, the Solano BID Advisory Board has worked with Parks and Public Works staff to plan and implement a tree planting program. After extensive consultation with the Advisory Board, the City Arborist, Dan Gallagher, marked locations for tree wells that do not interfere with underground utilities. In the week of November 4-9, a contractor retained by the City cut tree wells and staff then planted 29 trees (28 Redpointe Maple and one Redspire Pear), with some additional trees to be planted after adjustment of cut wells to avoid obstructions.

The work plan and budget for 2013 propose to pay for a contractor to water the newly-planted trees during the dry season of the year, March-October. In addition, it allows allocations to support other possible physical improvements to Solano Avenue (e.g., tree grates, pedestrian lights) and any planning process that might be necessary to qualify for public improvement grants.

In response to a request from merchants, the Advisory Board voted on November 7 (M/S Snidow-Accornero, unanimous) to ask the City Council to modify the approved Annual Reports and Budgets for 2012 and 2013 to allow expenditure of up to \$5,000 from 2012 revenues and 20% of 2013 revenues for “collaborative marketing” efforts to attract customers to the Solano business district. No specific marketing efforts were designated, but the Advisory Board expects to discuss this in the future.

Because the Advisory Board is a governmental body that makes recommendations to the Berkeley City Council and has no separate organizational status, it cannot receive and spend Solano BID revenues. On November 7, it therefore also requested (M/S Thomas-Taylor, unanimous) that the Council authorize the City Manager to enter into a contract with Livable Berkeley to act as the fiscal agent for the Solano BID, receiving and disbursing funds for purposes outlined in the 2013 Annual Report and Budget, as modified.

BACKGROUND

Established by Ordinance (Chapter 7.97 of the Berkeley Municipal Code (BMC)) on December 16, 2003, the Solano Avenue BID supported membership in the Solano Avenue Association (SAA) for Berkeley Solano Avenue businesses plus some supplementary services such as sidewalk cleaning, sidewalk planters, and promotional banners. From 2004-2007, the Council levied assessments to support the SAA and the services it provided. However, because of a persistent controversy within the merchant community about the merits of belonging to the SAA, participating in the Solano Stroll, and the benefits of the sidewalk cleaning and other services supported by the BID, in 2007 the Solano BID Advisory Board recommended to the City Council that it not renew the assessment for calendar year 2008. Accordingly, the Council did not levy assessments in 2008-2011, although the Solano BID Ordinance remained in force as Chapter 7.97 of the BMC.

In 2011, however, a number of Solano merchants met with the Council member who represents the district that includes Solano Avenue to discuss the possibility of reviving the Solano Avenue BID with a different program than before: streetscape improvements including, in the first instance, support of a tree planting program. Two public meetings and several mailings to the merchant community showed that the proposal enjoyed majority, in not unanimous, support in the Berkeley Solano merchant community.

Accordingly, Council members appointed a new Solano BID Advisory Board to consider whether to recommend revival of the Solano BID to support part of the cost of a proposed tree planting program on Solano Avenue. Meeting for the first time on January 28, 2012, the new Advisory Board recommended that the Council revive the BID and levy an assessment to finance costs for a tree planting program on Solano Avenue that could not be funded from the City budget. Existing funding from CalTrans to the City of Berkeley can pay for the cost of the tree planting itself, including the trees, sidewalk cuts and labor for planting. However, the City Arborist requires that newly-planted trees be watered for three years by a landscaping contractor to ensure that they receive enough water during the crucial early growth period. The CalTrans grant cannot be used to pay for this so the Solano BID agreed to cover this expense.

In addition to working with City staff to plan the tree planting program, on July 18, 2012, the Advisory Board held a workshop conducted by landscape architect John Roberts on other possible streetscape improvements on Solano. Roberts outlined preliminary plans for pedestrian lights, widened sidewalks with green space at some locations, and improved crosswalks. The workshop was attended by 25 neighborhood residents in addition to Advisory Board members. The Advisory Board is interested in continuing Mr. Roberts' preliminary work to conduct workshops that could lead to a streetscape improvement plan for Solano Avenue. In order to apply for grants for major streetscape improvements, regional funding sources usually require an approved streetscape plan. Therefore, the budget for 2013 also makes allowance for the BID to pay part of the cost of a possible streetscape improvement plan as well as some possible physical improvements themselves. The draft budget for 2013 is very general, pending completion of the tree planting program and further discussions by the Advisory Board.

ALTERNATIVE ACTIONS CONSIDERED

The Advisory Board has discussed and is continuing to discuss, various types of streetscape improvements, particularly if it is possible to apply for grant funding to pay for most of the cost. The Advisory Board also looked at several possible fiscal agents, but selected Livable Berkeley primarily because it charged the lowest administrative fee, 5% of funds deposited.

CONTACT PERSON

David Fogarty, Economic Development Project Coordinator, 981-7534

- 1: Resolution: Confirming the Annual Report
- 2: Resolution: Contract with Livable Berkeley
- 3: Resolution 65,923-N.S.
 - Exhibit A Budget
 - Exhibit A1 Annual Report
- 4: Public Hearing Notice

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

CONFIRMING THE YEAR 2013 ANNUAL REPORT AND BUDGET FOR THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT (BID), THEREBY LEVYING AN ANNUAL ASSESSMENT FOR THE SOLANO AVENUE BID FOR CALENDAR YEAR 2013

WHEREAS, the Solano Avenue Business Improvement District (BID) Advisory Board recommended an Annual Report to the Berkeley City Council that outlined the activities of the District proposed for the year 2013, including a budget for said activities, as required by California Streets and Highways Code Section 36533 and Berkeley Municipal Code Section 7.97.080; and

WHEREAS, on October 30, the City Council by Resolution No. 65,923-N.S. approved the Annual Report and proposed budget of the Solano Avenue BID for 2013 and declared its intent to levy an assessment in the District to finance the proposed activities for the balance of calendar year 2013; and

WHEREAS, Resolution No. 65,923-N.S. also scheduled a public hearing for December 11, 2012, to consider levying said assessment and gave notice that interested parties could attend and be heard on the issue, for and against; and

WHEREAS, the City Clerk has notified potential assesses of the public hearing by publishing said Resolution in a newspaper of general circulation with a public hearing notice; and

WHEREAS, the public hearing has now been held and there has not been protests by business owners who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that protests are over-ruled and the Annual Report of the Solano Avenue BID is confirmed, thereby levying an annual assessment for the Solano Avenue BID for 2013.

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

MODIFYING THE ANNUAL REPORT AND BUDGET OF THE SOLANO BID FOR 2013 TO ALLOW AN ADDITIONAL PURPOSE FOR EXPENDITURES AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH LIVABLE BERKELEY TO SERVE AS THE FISCAL AGENT OF THE SOLANO BID CALENDAR YEAR 2013

WHEREAS, on October 30, the City Council by Resolution No. 65,923-N.S. approved the Annual Report and proposed budget of the Solano Avenue BID for 2013; and

WHEREAS, the City Council has now held a public hearing on the levying of the assessment for 2013, over-ruled protests, and confirmed the Annual Report and Budget for 2013, thereby levy the assessments; and

WHEREAS, the Solano BID Advisory Board at its November 7 meeting requested that the City Council modify the purposes for expenditures stated in the Annual Report and Budget to allow the expenditure of up to \$5,000 from 2012 funds and up to 20% of 2013 funds for the purpose of collaborative marketing to attract customers to the district; and

WHEREAS, said purpose is fully compatible with State legislation, California Streets and Highways Code Section 36500 et.seq., that authorizes BIDs, as well as Berkeley Municipal Code Section 7.97 that authorizes the Solano BID; and

WHEREAS, the Advisory Board also requested that the City Council authorize the City Manager to enter into a contract with Livable Berkeley to serve as fiscal agent for receipt and disbursement of Solano BID funds; and

WHEREAS, The contract with Livable Berkeley has been entered into the City's contract management database and assigned CMS No. B6H77.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the purposes for expenditures stated in the approved and confirmed Annual Report and Budget for 2013 is modified to allow the expenditure of up to \$5,000 from 2012 funds and up to 20% of 2013 funds for the purpose of collaborative marketing to attract customers to the district.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract with Livable Berkeley for receipt and disbursement of Solano BID funds.

RESOLUTION NO. 65,923-N.S.

APPROVING THE REPORT AND PROPOSED BUDGET OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT FOR 2013; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2013; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR DECEMBER 11, 2012 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR 2013

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on December 9, 2003 the Berkeley City Council established such an area known as the Solano Avenue Business Improvement District (the "District"); and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2013 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Solano Avenue assesses; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

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

Section 1. The City Council hereby approves the Solano Avenue Business Improvement District Annual Report for the year 2013 (Exhibit A) as submitted to the City Clerk by the Solano Avenue Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Solano Avenue Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A2 to the 2013 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report (Exhibit A) and Budget (Exhibit A1) appended hereto.

Council intends that these funds be used for designated activities and improvements in the Solano Avenue commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A2 and according to the business classifications and rates set forth in Exhibit A3 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on the 11th day of December, 2012 in the Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Solano Avenue Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Solano Avenue Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before the time fixed for the hearing and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

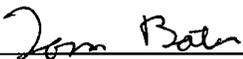
* * * * *

The foregoing Resolution was adopted by the Berkeley City Council on October 30, 2012 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, Acting City Clerk

Exhibit A

Annual Report for the Solano Avenue Business Improvement District for 2013

In 2012 the Advisory Board has been concerned above all with working with the City Arborist, Dan Gallagher, to plan the planting of up to 39 new trees on Solano Avenue. (The exact number may not be known until the location of utilities is determined.) A CalTrans grant to the City of Berkeley will cover the cost of purchasing the trees, cutting the tree wells and planting the trees. The Solano BID would need to cover the cost of any enhancements such as tree grates and also bear the cost of watering the trees for up to three years. It now appears that the location of electrical conduit running between streetlights will prevent the tree wells from being a standard dimension, which would require any grates to be specially-designed and raise the cost. While we do not completely rule out purchasing grates after trees have been planted and retrofitting them to the non-standard tree wells, costs considerations make this unlikely. The Board has also discussed other ways of covering the tree wells, such as decomposed granite, and would consider these alternatives if the pedestrian experience with uncovered tree wells is unfavorable.

We have solicited bids for a contractor to water the trees for up to three years and expect to have selected one by the end of the 2012 calendar year.

In addition to the immediate issue of the tree planting, the Advisory Board discussed a longer range vision for the Solano streetscape presented by landscape architect John Roberts. Mr. Roberts conducted a workshop on July 18 that was attended by 25 neighborhood residents as well as the Advisory Board. Mr. Roberts' drawings showed proposed locations for pedestrian lights, wider sidewalks, parklets and crosswalk improvements. Consultation with City staff and further public process will be necessary before we can recommend the improvements to the Planning Commission as a streetscape plan for Solano. We are very interested in the possibility of applying to regional agencies for funding for streetscape improvements. If a streetscape plan is a requirement for a grant application, we may be willing to pay for part or all of the cost of a landscape designer to finish the work Mr. Roberts has begun.

Proposed Improvements and Services for 2013

We have budgeted for a contractor to water the trees for up to three years and expect to have selected the actual contractor by the time the Council reviews our work plan and budget for 2013. The Board is very concerned with the pedestrian experience and merchant experience with the newly-planted trees. We will continue to discuss the possible need for some permeable cover for the tree wells such as decomposed granite and would consider paying for a contractor to install it, if necessary. We have begun evaluating the possibility of retrofitting existing Solano streetlamps with pedestrian-oriented fixtures. Finally, we are open to the possibility to paying a landscape architect to conclude the work Mr. Roberts has begun for a formal streetscape improvements plan for Solano Avenue. Other than the selection of a contract for tree watering, which is underway, no decision has been made to actually allocate money for these services and improvements.

Carryover of Funds

No funds levied in 2012 have actually been spent and will be carried over to 2013. Since 2012 collections are still underway, the exact total to be carried over is not clear but is expected to be approximately \$15,000.

Boundaries

The boundaries of the District remain the same as those established in B.M.C. Chapter 7.97.030 and in the map appended as Exhibit A.2, except that we recommend that addresses numbered as 1859 Solano but located in an alleyway be assessed at the Zone B rate. They do not enjoy the visibility and foot traffic to justify the higher zone A rate.

Assessments

Assessment rates remain as established in B.M.C. Table 7.97.050 and appended as Exhibit A.3. The Advisory Board does not propose any changes in the classifications or rates.

DRAFT SOLANO AVENUE BID BUDGET FOR 2013

Income: Carryover from 2012:	\$15,000
New Revenue 2013:	\$35,000
<u>Total</u>	<u>\$50,000</u>

Expenses: Contract for tree watering:	\$12,000
Other possible expenses mentioned in Annual Report:	\$42,000
<u>Total</u>	<u>\$50,000</u>

Exhibit A3

**Table 7.97.050
BERKELEY SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT
ANNUAL ASSESSMENT FORMULA**

Type of Business		Annual Assessments	
		Zone A	Zone B
a. Retailers and Restaurants:	1-5 employees	\$200	\$125
	6-9 employees	\$300	\$175
	10+ employees	\$400	\$225
b. Service Businesses:		\$175	\$100
c. Professional Businesses:		\$150	\$100
d. Financial Institutions		\$500	\$500

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**RENEWAL OF THE SOLANO AVENUE BUSINESS IMPROVEMENT
DISTRICT AND LEVYING OF ASSESSMENT FOR 2013**

The Solano Avenue Business Improvement District (BID) Advisory Board is proposing that the Berkeley City Council confirm the Annual Report of the Solano Avenue BID for 2012 and levy an assessment for the balance of 2012.

The hearing will be held on December 11, 2012 at 7:00 PM 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 **November 29, 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 Monday, November 26, 2012 will be included in Council agenda packets. Communications received after that date, up to 5:00 p.m. on Tuesday, December 4, 2012 will be distributed to council in a supplemental packet five days before the meeting. Communications received less than seven days before the Council meeting but prior to noon on the day of the meeting, will be distributed at the Council meeting. If the communication includes maps or photos or any other material not reproducible on a copy machine, fifteen copies should be provided to the City Clerk. Communications should be mailed or delivered directly to the City Clerk to ensure receipt by all Councilmembers.

*Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6908 or clerk@cityofberkeley.info for further information.*

For further information, please contact David Fogarty, Economic Development Project Coordinator, at 510-981-7534.

Published: November 9, 2012 – The Berkeley Voice
As required by Streets and Highways Code Section 36533.

~~~~~  
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 11/29/12.

Mark Numainville, Acting City Clerk

