


Office of the City Manager

ACTION CALENDAR
November 18, 2003

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, Acting City Manager

Subject: Establishment of Solano Avenue Business Improvement District

RECOMMENDATION

Conduct a public hearing on the proposed establishment of the Berkeley Solano Avenue Business Improvement District and upon conclusion: 1) delay action as necessary to allow the City Clerk to tabulate any written protests against formation of the proposed District received before or during the public hearing; and 2) if no majority protest exists after tabulation of any written protests, adopt the first reading of an Ordinance adding BMC Section 7.97 establishing the Berkeley Solano Avenue Business Improvement District and levying assessments on businesses within the District for calendar year 2004.

FISCAL IMPACTS OF RECOMMENDATION

Projected expenditure of \$40,000 in Business Improvement District revenues for FY 2004; budget code to be assigned if the BID is established.

Adoption of the Resolution has no direct financial impact on the City's budget. The BID constitutes an independent funding source that must be dedicated to improvements, maintenance and marketing activities of the District. To the extent that the activities of the BID enhance the District and its business climate, the District will contribute towards enhanced City revenues through increased sales and property taxes. Administration of the BID, including assessment billings, annual renewals and contract administration, will require some ongoing staff time and expense for the Office of Economic Development and the Finance Department.

CURRENT SITUATION AND ITS EFFECTS

On October 21, 2003, Council adopted Resolution No. 62,262-N.S. declaring its intention to establish the Berkeley Solano Avenue Business improvement District (BID). The Resolution defined the boundaries of the proposed District, including the boundaries of two separate benefit zones, the types of activities and improvements proposed to be funded by the levy of assessments against businesses and the method and basis for levying assessments. The Resolution set a public hearing for November 18, 2003 to hear all oral and written protests against establishment of the District and other comments on its establishment.

In accordance with the requirements of the Business Improvement District Law of 1989, the City Clerk mailed a complete copy of the Resolution of Intention to all businesses owners in the

proposed District within seven (7) days of adoption of the resolution and published a notice of the November 18, 2003 public hearing in a newspaper of general circulation.

BACKGROUND

The Business Improvement District Law of 1989 requires that a public hearing be held on the proposed establishment of a business improvement district and the levy of assessments. At the public hearing the City Council shall hear all protests against establishment of the BID. Protests may be made orally or in writing, but only written protests from businesses in the District will be counted in determining if the BID should be established. Written protests against formation of the District may be filed with the City Clerk at or before the time scheduled for the public hearing. Written protests may be withdrawn during the hearing. If written protests are received from businesses that will pay 50 percent or more of the assessments, the BID will not be formed. If the majority protest is only against the furnishing of certain types activities or improvements, then those activities or improvements shall be eliminated from the District.

At the conclusion of the November 18, 2003 public hearing, the City Clerk will tabulate all written protests. If no majority protest exists against formation of the BID, Council may make any desired revisions in the boundaries, activities or proposed assessments and adopt the first reading of the attached ordinance establishing the Berkeley Solano Avenue Business Improvement District.

Following is a summary of the elements of this BID, which are in the Resolution of Intention:

Proposed Assessment Formula

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

Two benefit zones are proposed. Zone A includes all businesses on parcels with frontage on Solano Avenue. Zone B includes all other businesses within the District. Assessments are reduced in Zone B, as Zone B businesses are not expected to receive the same degree of benefit as those on Solano Avenue.

BID Programs

The proposed BID will pay for programs aimed at marketing, promoting and enhancing the Solano Avenue commercial area. Funding for these programs will come from BID assessments as well as from other sources. The following chart is a summary of the programs and anticipated annual budget:

Program	Activities	Annual Budget
Marketing and Promotion	Advertising, festivals, special events and other promotional activities, including insurance	\$22,000
Civic Beautification	Sidewalk cleaning, holiday lighting, banners, landscaping and other improvements	\$22,000
Business Advocacy and Program Management	Administration of the BID's programs and activities	\$11,000
Total Budget	(BID assessments and other income)	\$55,000

If this district is established following the November 18, 2003 public hearing, staff will subsequently bring to Council a resolution establishing a BID Advisory Board. Business-based BIDs must be renewed annually through adoption of a resolution. The assessments for this BID would take effect at the start of 2004. Billings for the assessments would be sent concurrently with billings for business license fees. The total budget includes an estimated \$15,000 in other, non-BID revenue, primarily net income from special events.

RATIONALE FOR RECOMMENDATION

BIDs have proven to be an effective mechanism to improve and enhance business districts. The City's experience with the existing BIDs in Berkeley has shown that BIDs can enhance and revitalize commercial areas and increase revenues to the City by providing improvements and services which go beyond those that the City can provide. The Solano Avenue Merchants Association (SAA) has done a very good job of marketing and promoting Solano Avenue with limited funds raised through voluntary memberships and the Solano Stroll. However, the SAA has been limited in its ability to provide services and improvements that are available in other nearby commercial districts with BIDs. Formation of a BID assures that all businesses in a district contribute to its improvement. An additional benefit is that the sponsoring merchants' group can spend less time on fund raising and membership drives.

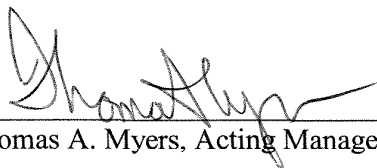
ALTERNATIVE ACTIONS CONSIDERED

The SAA considered the possibility of forming a property-based BID, but that format was not compatible with the SAA's existing membership structure. A business-based BID provides for enhanced revenues and services within the SAA's existing organization and operation. The SAA considered the option of not pursuing a BID, but that would leave the SAA with ongoing shortfalls for needed improvements and services.

CONTACT PERSON

Ted Burton, Office of Economic Development – 981-7536

Approved:



Thomas A. Myers, Acting Manager of Economic Development

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 7.97 ESTABLISHING THE
BERKELEY-SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

A. Pursuant to Section 36500 et seq. of the California Streets and Highways Code (the "Act") the City Council on October 21, 2003, adopted Resolution No. 62,262 -N.S., declaring its intention to establish a parking and business improvement district to be known as the Berkeley Solano Avenue Business Improvement District (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 to benefit the businesses in the District.

B. Pursuant to the Act and the Resolution, City conducted a public hearing, after having given due notice thereof as required by law, on November 18, 2003, in the Council Chambers at 2134 Martin Luther King Jr. Way, Berkeley, California. At said public hearing the City Council received and considered all oral and written protests regarding the proposed establishment of the District, and written protests from businesses in the proposed District that would pay 50 percent or more of the proposed assessment were not received.

C. The public interest, convenience and necessity require the establishment of the Proposed District, and the businesses within the District will be benefited by the expenditure of the funds raised by the assessments levied hereby in the manner prescribed herein.

D. Council may, for each of the purposes set forth in Section 36510 & 36513 of the Act, establish one or more separate benefit zones based upon the degree of benefit derived from the formation of the District and may impose a tiered assessment within each of the benefit zones, and all provisions of the Act applicable to the establishment, modification, or disestablishment of the District shall apply to the establishment, modification, or disestablishment of benefit zones.

E. Businesses in the District shall be subject to any amendments to the District's boundaries, amounts of assessments, improvements or activities subject to the requirements of the Act. For the purpose of establishing assessments in the District, Council may make a reasonable classification of businesses, giving consideration to various factors, including general benefit to businesses and the degree of benefit received from District activities. Assessments levied on businesses pursuant to this shall, to the maximum extent feasible, be levied on the basis of the estimated benefit to the businesses within the District.

Section 2. That Chapter 7.97, Solano Avenue Business Improvement District, is added to the Berkeley Municipal Code (BMC) as follows:

Chapter 7.97

SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT

Sections:

- 7.97.010 Definitions.**
- 7.97.020 Establishment of district.**
- 7.97.030 Boundaries of district.**
- 7.97.040 Calculation of assessments.**
- 7.97.050 Use of revenue.**
- 7.97.060 Collection of benefit assessments.**
- 7.97.070 Voluntary contributions to district.**
- 7.97.080 Advisory board and annual report.**
- 7.97.090 District proceeds do not offset City services.**
- 7.97.100 Boundary and assessment modifications.**

7.97.010 Definitions

In order to distinguish between District businesses and for the purpose of calculating and applying the amounts of assessments owed, the following definitions shall apply:

"Retail Businesses" include all businesses not covered by other definitions set out in this section, at least fifty percent (50%) of whose gross income is derived from "retail sales" as that term is defined under the California Sales and Use Tax Law. The fact that a substantial part of its business consists of sales other than retail sales does not exclude said business from this classification so long as such other business component does not account for more than fifty percent (50%) of said business' gross income.

"Restaurant Businesses" include cafes, eating establishments, sandwich shops, dinner houses, restaurants and fast food services and other similar businesses.

"Lodging Businesses" include inns, hotels, motels, RV Parks and other similar businesses.

"Service Businesses" include general office, news and advertising media, printers, photographers, personal care facilities and outlets, entertainment uses, service stations, repairing and servicing businesses, renting and leasing businesses, utilities, vending machine businesses, household finance companies, and other similar businesses.

"Professional Businesses" include attorneys, architects, accountants, engineers, surveyors, physicians, dentists, optometrists, chiropractors, therapists and others in a medical / health service field, consultants, real estate brokers, financial advisors, laboratories (including dental and optical), hearing aid services, artists and designers.

"Financial Businesses" include banks, savings and loans, credit unions and other similar businesses.

7.97.020 Establishment of district.

Pursuant to the Act, a Parking and Business Improvement District is hereby established to be named the "Berkeley-Solano Avenue Business Improvement District" (the "District").

7.97.030 Boundaries of district.

The boundaries of the District and the benefit zones within the District are as follows. The District's Boundary Map is attached to the ordinance codified in this chapter and on file with the office of the City Clerk.

ZONE A

Includes all businesses on real estate parcels with frontage on Solano Avenue or in the C-SO

zone between The Alameda and the Berkeley/Albany line.

Northern Boundary:

A line connecting the northern edges of all parcels fronting on the northern side of Solano Avenue or in the C-SO zone from the Albany Town Line to The Alameda. The parcels along the northern boundary are as follows:

Assessor's Map 62:

Block 2848: Parcels 13 and 14

Block 2870: Parcels 16,17-2, 18,19 and 20

Block 2872: Parcels 17,18,19, 20, 21, 22, 23, 24, 25 and 26

Block 2871: Parcels 7-2, 10, 11, 12-1, 15-1, 16-1, 19, 20, 21 and 22

Assessor's Map 61:

Block 2602: Parcels 2, 3-1, 3-2, 4, 5, 5-1, 6, 8, 9, 33-1, 35-4, 37, 38, 40-1, 43-1,44-1, 45, 46, 47, 48, 49, 50 and 51

Eastern Boundary

The western edge of The Alameda

Southern Boundary

1. A line connecting the southern edges of all parcels fronting on the southern side of Solano Avenue or in the C-SO zone from The Alameda to the Albany Town Line. The parcels along the southern boundary are as follows:

Assessor's Map 61

Block 2603: Parcels 1,3-3 and 4

Block 2611: Parcels 1-2, 4, 25-3, 25-4 and 28-1

Block 2612: Parcels 1 and 2

Block 2613: Parcels 1-1, 5-1 and 6

Block 2614: Parcels 1, 2, 3, 4 and 22 through 28

2. The northern edge of Solano Avenue from Tulare Avenue to a point approximately 100 feet west of Neilson St.

Western Boundary

The Albany Town Line

ZONE B

Includes all businesses within the boundaries of the District on parcels not fronting on Solano Avenue between The Alameda and the Berkeley/Albany line or in the C-SO zone. The boundaries of the Zone B areas are as follows:

Area 1

A line around the three parcels immediately south of Zone A on the western edge of The Alameda, This area includes the following parcels:

Assessors Map 61

Block 2603: Parcels 5, 6, and 7

Area 2

A line around the block enclosed by the eastern edge of The Alameda, the southern edge of Solano Avenue, the western edge of Contra Costa Avenue and the northern Edge of Los Angeles Avenue. This area includes the following parcels:

Assessors Map 61

Block 2575: Parcels 40-1, 41, 42, 43 and 44

Area 3

A line around Parcel 3-7, Block 2571, Assessors Map 61

7.97.040 Calculation of assessments.

All businesses, trades, and professions located within the District boundaries " shall, commencing on January 1, 2004, pay an annual benefit assessment to the District in the amounts shown in Table 7.97.050.

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	1-5 employees	\$200	\$125
Restaurants:	6-9 employees	\$300	\$175
	10+ employees	\$400	\$225
b. Service Businesses:		\$175	\$100
c. Professional Businesses:		\$150	\$100
d. Financial Institutions		\$500	\$500

No person or business shall be required to pay an assessment based on: (a) a residential use of the property within the District, or (b) a non-profit or government organization as defined by Section 501 (C) (6) of the Internal Revenue Service Code located within the District. Any new business established within the District shall not be required to pay an assessment for the Billing Period during which said business is initiated.

7.97.050 Use of revenue.

The funds raised by said benefit assessment shall be used for the statutory purposes set forth in the Act, which may include but are not limited to the following improvements and activities:

- A. General promotion of business activities within the District;
- B. Promotion of public events which benefit businesses within the District and which take place on or in public places within the District, including insurance;
- D. Furnishing of music in any public place in the District;
- E. The acquisition, construction, installation, or maintenance of any tangible property including but not limited to benches, trash receptacles, decorations and landscaping.

7.97.060 Collection of benefit assessments.

The benefit assessment authorized by this chapter shall be billed annually by the City with all funds collected to be placed in an account separate from the City's General Fund to be expended in accordance with this chapter and subsequent resolutions and fund management agreements. The levy of assessments will be accomplished by mailing assessment notices to all businesses as herein defined within the District by first class mail in conjunction with the City's annual business license renewal notice, to be due and payable within thirty days of receipt. Any business exempt from paying City business license fees shall be assessed in January of each year. The City shall collect all assessments and any penalties hereon as required by this chapter.

7.97.070 Voluntary contributions to district.

Contributions to the District shall be permitted on a voluntary basis. The boundary of the District shall not be modified as a result of the contribution, nor shall said contributing business be considered a member of the District for voting or other purposes. However, said

business making a voluntary contribution may be entitled to participate in the programs of the District upon a finding by the Board of Directors that the District derives a benefit from said business' participation in the program.

7.97.080 Advisory board and annual report.

A. Appointment. The City Council shall appoint an Advisory Board pursuant to Section 36530 of the Act in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on proposed improvements and activities, on the classification of businesses, and on the method and basis of levying assessments. This Advisory Board shall be made up of nine members. Members of the Advisory Board must own or represent a business in the District.

B. Resident Status. The Advisory Board is intended to represent the interests of businesses within the District and therefore members of the Advisory Board need not be residents of the City.

C. Annual Report. The Advisory Board shall prepare a report for each fiscal year for which assessments are to be levied. The report shall be filed with the City Clerk and shall comply with all the requirements of Section 36533 of the Act. The report shall be approved as filed or modified.

7.97.090 District proceeds do not offset City services.

Funds derived from the District shall not be used to offset or diminish current maintenance or capital improvement programs, including but not limited to, public property and sidewalk cleaning, street cleaning and maintenance, tree maintenance, restroom cleaning and maintenance. The City declares its intent to provide at least the same level and standard of maintenance and repair of public property within the District providing City funds are available from year to year.

7.97.100 Boundary and assessment modifications.

City Council may, at the Advisory Board's recommendation, modify the boundaries or assessments, established pursuant to this chapter; the modifications shall be made pursuant to the requirements of the Act, but no assessment shall be modified which would impair the ability of the District to meet the obligation of a contract to be paid from the revenues derived from the levy of assessments. Such changes shall be made by ordinance adopted after a hearing before the City Council or by resolution, if approved in conjunction with confirmation of the annual report.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.