



Office of the City Manager

CONSENT CALENDAR

October 25, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Thomas A. Myers, Acting Manager of Economic Development

Subject: Solano Avenue Business Improvement District

RECOMMENDATION

Adopt a Resolution approving the 2005 Annual Report of the Solano Avenue Business Improvement District (BID); declaring Council's intention to levy an annual assessment for the Solano Avenue BID for calendar year 2006; and directing the City Clerk to schedule a public hearing for November 15, 2005, to consider levying a renewed assessment for the year 2006.

FISCAL IMPACTS OF RECOMMENDATION

Projected expenditure of \$35,000 in BID revenues as included in the year 2006 Adopted Budget (budget code 474-8703-465.35-10).

Adoption of the Resolution has no direct financial impact on the City's budget. The BID constitutes an independent funding source that must be targeted to organizational, promotional and other commercial revitalization efforts that are recommended by the Advisory Board. To the extent that the work of the Solano BID enhances the development of Solano Avenue and its business climate over the long term, the BID contributes towards enhanced City revenues through increased sales and property taxes. The formula for assessments on individual businesses is shown in Exhibit A3 of the 2005 Annual Report.

CURRENT SITUATION AND ITS EFFECTS

On December 9, 2003, Council adopted an ordinance creating the Solano Avenue Business Improvement District. This is a business-based BID that assesses all businesses in the District. It must be renewed annually by the City Council. The attached Resolution complies with State requirements for the reauthorization of the BID assessment for another year. It approves the Annual Report (Exhibit A of the Resolution) submitted by the Solano Avenue Business District Advisory Board, declares the Council's intent to levy an annual assessment for the District for the coming year and sets a public hearing on the matter for November 15, 2005. After Council adoption, the Resolution will be published in a local paper of general circulation.

At the public hearing on November 15, 2005, the City Council may order changes in any of the matters provided in the Annual Report, including changes in the proposed assessments, the proposed improvements and activities to be funded, and the proposed boundaries of the area. At

the conclusion of the public hearing, Council may adopt a Resolution confirming the Annual Report as originally filed or as changed by it. The adoption of that Resolution shall constitute the levy of an assessment for the BID's 2006 calendar year.

At its September 28, 2005 meeting, the Solano Avenue Business Improvement District Advisory Board approved the 2005 Annual Report for submission to the City Council.

BACKGROUND

Following establishment of the Solano Avenue Business Improvement District, the City entered into a contract with the Solano Avenue Association for administration of the BID and implementation of the BID activities contained in the original Resolution of Intention. As is outlined in the attached Annual Report for the BID, the SAA has continued regular sidewalk sweeping, steam cleaning and weeding. Other improvements in 2005 include installation of sidewalk planters and coordination with the City's reconstruction of Solano Avenue.

The SAA continues to produce events, including the Solano Avenue Stroll, the Chocolate and Chalk Art Festival, holiday music and Dia de las Muertos. The SAA continues to market and promote the district through advertisements in various publications, distribution of its business directory and maintenance of its website.

In 2006 BID activities started in 2005 will continue, and the SAA will initiate additional activities, including installation of new Winter Holiday banners and possible street tree plantings. BID assessments for 2006 are estimated at \$35,000.

The Solano Avenue Business Improvement District Board reviewed the progress of the BID to date. The Board did not recommend any changes in the boundaries off the BID, benefit zones or the method and basis for levying the 2006 assessments. However, the Board did recommend that the City amend the BID ordinance to include penalties for delinquent assessment payments. The ordinance for this BID does not include any penalties for failure to pay the BID assessments on time. In contrast, the ordinance creating the Downtown BID does impose a penalty of ten percent for each month after an assessment payment is due, provided that the cumulative penalties shall not exceed the original assessment. Staff will submit a separate item to Council amending the ordinance that established this BID to impose delinquent payment penalties at the same rate as for the Downtown BID.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Solano BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

ALTERNATIVE ACTIONS CONSIDERED

The Solano Avenue BID Advisory Board considered whether the assessment rates should be revised for 2006. The Board concluded that there should be no change in the rates at this time.

CONTACT PERSON

Thomas A. Myers, Acting Manager of Economic Development, 981-7530

Attachments:

1: Resolution

Exhibit A: 2005 Annual Report of the Solano Avenue Business Improvement District

RESOLUTION NO. -N.S.

APPROVING THE YEAR 2005 ANNUAL REPORT OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT; DECLARING COUNCIL'S INTENTION TO LEVY AN ANNUAL ASSESSMENT FOR THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT FOR CALENDAR YEAR 2006; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 15, 2005 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR THE YEAR 2006.

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 2006 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 assessees; 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 2005 (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 A3 of the BID year 2005 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District shall be funded by the levy of assessments on businesses within the District boundaries and may include the following:

- a. Public improvements.
- b. Maintenance of public spaces.
- b. Promotion of public events which benefit businesses in the District and which take place on or in public places within the District.
- c. Furnishing of music in any public place in the area.
- d. Advertising and promotion of tourism within the area.
- e. Other activities that benefit businesses located and operating in the area.

Council intends that these funds be used principally for promotion and marketing activities, maintenance and public improvements for 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 in the amounts and on the business classifications set forth in Exhibit A3, which is attached hereto and incorporated herein by reference. The projected levied assessments for the year 2006 total \$35,000 (budget code 474-8703-465.35-10).

Section 6. A public hearing shall be held before the City Council on the 15th day of November 2005 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 that 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 causing the Resolution of Intention to be published once in a newspaper of general circulation in the City of Berkeley not less than seven days before the public hearing.

Exhibits

A: 2005 Annual Report of the Solano Avenue Business Improvement District



EXHIBIT A

SOLANO AVENUE BERKELEY BUSINESS IMPROVEMENT DISTRICT 2005 ANNUAL REPORT

Solano Avenue Association

PMB #101
1563 Solano Ave
Berkeley, CA 94707

(510)527-5358
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BOARD OF DIRECTORS

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Vana Healing Arts
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Solano Cleaning Center

EX OFFICIO

TED BURTON
City of Berkeley
JEWEL OKAWACHI
Albany City Council

STAFF

LISA BULLWINKEL
Executive Director

1. 2005 BID Activities

Events & Promotions

Produced & distributed 15,000 SAA Directories
Maintained SAA Website
Full-page ads in Diablo Magazine, The Express &
Berkeley Convention & Visitor's Guide
Chocolate & Chalk Art Festival
Solano Stroll & Parade
Dia de las Muertos
Holidays on Solano

Physical Improvements

Sidewalk steam cleaning 1x month June-October
Sidewalk sweeping & weeding 2x week Jan.-Dec.
Poster removal 2x week January-December
Purchase, installation & maintenance of 20 sidewalk
planters
Coordinated w/City during street reconstruction

Administration

2. BID Income and Expenditures to date.

Exhibit A.1

Following are the elements required by Section 36533 of the
Streets and Highway Code:

**3. Any proposed changes in the boundaries of the parking
and business improvement district or in any benefit zones
within the areas.**

There are no proposed changes in the boundaries or in any
benefit zones within the area.



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VIRGINIA JONES
Red Oak Realty
JENNIFER LONG
Vana Healing Arts
ROBERT MANN
Saiber's Centers
HARRY PRUYN
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4. The improvements and activities for 2006.

A continuation of the improvements and activities in 2005 including commencement of a Winter Holiday street banners public art project if grant money is received and the purchase of additional planters.

5. An estimate of the cost of providing the improvements and activities for 2006.

Exhibit A.2

6. The method and basis for levying the assessment for 2006.

Exhibit A.3

7. The amount of any surplus or deficit revenues to be carried over from the previous year.

None. Plans are to expend all 2005 funds by December 31, 2005.

8. The amount of any contributions to be made from sources other than assessments.

Solano Avenue Association contributes 50% of all revenues except for dues collected from Albany businesses plus 100% of dues collected from Berkeley businesses.

EXHIBIT A.1 - Income and Expenses to date (9/15/05).

INCOME

Collected Assessments			\$32,926
Contributions from other sources:			
Solano Avenue Association Income	\$69,340		
Stoll Income	<u>109,844</u>		
	\$179,184		
Less Collected Assessments	<32,926>		
Less All Dues Collected	<u><16,788></u>		
	\$129,470		
Divided @ 50%	=	\$64,735	
Plus Berkeley non-BID dues		<u>1,538</u>	
	Subtotal		\$66,273
SAA Accounts Receivable - 50% to BID			6,607
BID fees paid late and receivable			<u>1,100</u>
	Total BID Income		\$106,906

EXPENSES

To Date	BID Specific	SAA 50%	Total
Events/Promotions	4,250	26,575	30,825
Physical Improvements	13,746	1,146	14,892
Office		6,470	6,470
Administration	10,012	20,024	<u>30,036</u>
		Subtotal	\$82,223
BID Accounts Payable - 100%			6,150
SAA Accounts Payable - 50%			<u>18,533</u>
	Total BID Expenses		\$106,906
	Balance		-0-

EXHIBIT A.2 – Projected 2006 Income and Expenses

INCOME

2006 Assessments		\$35,000
2005 Assessments (undistributed)		1,100
Contributions from other sources:		
Berkeley Dues	900	
50% SAA Income	<u>70,000</u>	
		<u>70,900</u>

Projected BID Income \$107,000

EXPENSES

20% Administration	21,400
50% Marketing & Promotions	53,500
30% Physical Improvements	<u>32,100</u>

Projected BID Expenses \$107,000

Balance -0-

EXHIBIT A.3 - 2006 Assessment Formula

State law requires that BID assessments be levied on the basis of the estimated benefit to the businesses within a district. Cities may classify businesses for the purpose of determining their relative benefit from BID assessments and activities. Cities may also create separate benefit zones within a district in order to scale assessments based upon the relative benefits of different locations within the District.

The Solano BID has 2 Benefit Zones. 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 businesses there are not expected to receive the same degree of benefit as those on Solano Avenue. Assessments are scaled to the size and type of business, reflecting the relative benefits of the BID activities to different types of businesses. Since the BID is primarily a commercial marketing program, restaurants and retail uses are generally considered to receive higher benefits from BID activities and therefore pay higher benefit fees. Following are the annual assessments by zone and type of business.

Annual Assessments

Type of Business		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:		\$100	\$65
d. Financial Institutions		\$500	\$500

Employees for retail and restaurant businesses are counted in full time equivalent positions (2000 hours annually equals one full time position).

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.