



Office of the City Manager

INFORMATION CALENDAR
November 27, 2007

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Michael Caplan, Acting Manager of Economic Development

Subject: Solano Avenue Business Improvement District

INTRODUCTION

In November and December 2006, a substantial number of Berkeley Solano merchants signed petitions opposing renewal of the Solano Avenue Business Improvement District (hereafter “the Solano BID”) for 2007. After listening to the views of opponents as well as supporters of the Solano Avenue BID, the Council renewed the BID assessment for 2007 but at a rate 20% lower than 2004-2006 and directed the Solano Avenue Business Improvement District Advisory Board (hereafter, the “Advisory Board”) to consult with the entire Berkeley Solano merchant community and develop a new workplan. The Council also mandated a financial review of the Solano Avenue BID. (Resolution No. 6350–N.S., Attachment 1)

This item transmits the Advisory Board’s report on its efforts to develop a new workplan and reconcile differences among the merchants about the Solano BID. The report also states the Advisory Board’s conclusion that the division within the merchant community over the Solano BID and its troubled relationship to the Solano Avenue Association (SAA) cannot be overcome in the near term and that continuing the BID would absorb time and energy that would be better spent on voluntary activities to promote the business district. Both the Advisory Board and the Solano Avenue Association recommend that the assessment not be renewed for 2008.

CURRENT SITUATION AND ITS EFFECTS

At its meeting on November 7, 2007, the Advisory Board discussed a draft Annual Report for submission to the City Council. Approval of the Annual Report with a recommended budget and workplan for 2008 would have initiated renewal of the Solano BID. The Advisory Board, while approving the annual report as a summary of its activities in 2007, decided to recommend that the BID not be renewed for 2008. (M/S Powning/Thomas; Ayes: Austin, Bellevue, Powning, Snidow, Taghavi, Taylor, Thomas; Noes: None; Absent: Fischrup).

BACKGROUND

Beginning in 2002, the SAA urged both Albany and Berkeley to form Business Improvement Districts (BIDs) on Solano Avenue to support the activities of the SAA. Their idea was that financing through BIDs in both cities would guarantee a regular, predictable budget for the SAA and avoid “free riders” who benefited from SAA services but who refused to join it and pay membership fees.

On December 9, 2003, Council adopted an ordinance creating the Solano Avenue Business Improvement District. It was set up as a business-based BID that assesses all businesses on the Berkeley portion of Solano Avenue and a few commercial addresses on adjacent streets. It must be renewed annually by the City Council. As Berkeley formed a Solano Avenue BID but Albany did not, this meant that the SAA continued as a voluntary membership organization in Albany but in Berkeley membership was financed through the BID and therefore mandatory.

From the beginning, this anomalous situation has contributed to tension and misunderstandings in the Berkeley Solano merchant community. While many Berkeley merchants supported the SAA and valued its activities, some had never wanted to be members of the SAA and resented being forced to support it. Unfortunately, some assesses began circulating rumors that the SAA and its executive director had misappropriated BID funds. It is important to note that staff has found no evidence to support these rumors. A financial review of the SAA-Solano BID relationship mandated by the City Council did not show any misappropriation of funds or serious accounting irregularities. (See Solano Avenue Berkeley BID Financial Review, Attachment 2).

The SAA is generally recognized as one of the best-established and most successful district merchant organizations in the Bay Area. Its major annual event, the Solano Stroll, attracts well over 100,000 people and plays a major role in creating regional awareness about the Solano Avenue business district. Hard-working merchant volunteers assisted by one part-time staff person also organize other promotional events (Day of the Dead, Chocolate and Art Festival), distribute 14,000 Solano business directories and maintain a website of Solano businesses.

Nevertheless, some businesses feel that they do not benefit from the Solano Stroll because on that particular day, their business decreases because regular customers cannot reach their store. This point of view ignores the benefits from a regional event that promotes Solano Avenue as a whole.

As a result of the Council’s conditional renewal in 2007, the Advisory Board made a conscientious effort to reach out to merchants, including a mail survey of service priorities for the BID. Based on the survey, the Advisory Board developed a new workplan that included three elements: 1) continued membership in the SAA for Berkeley merchants and participation in its programs (Solano Stroll and other events, Solano Directory and website, etc.); 2) sidewalk cleaning for the assessment area in Berkeley; and 3) a cable television advertising campaign for the holiday season. The

Advisory Board believes that most Berkeley Solano merchants value these BID-financed programs.

Unfortunately, the ongoing controversy has made service on the Advisory Board time-consuming and unpleasant. In recent weeks, it has become clear that despite the Advisory Board's efforts, the same condition would continue in 2008. Recently, the SAA Board of Directors discussed the actual value of the Solano Berkeley BID and decided to recommend that the BID not be renewed. In 2007, the BID provided \$14,636 in membership funds for Berkeley merchants, but the same amount could probably be raised through voluntary memberships. The SAA Board concluded that their time would be better spent focused on positive activities to promote the business district. The current SAA Board President, Attorney Robert Cheasty, stated the SAA's point of view at the November 7 meeting prior to the Advisory Board's vote.

CONTACT PERSON

Dave Fogarty, Economic Development Project Coordinator, 981-7530

Attachments:

1. Resolution No. 63,530–N.S.
2. Solano Avenue Berkeley BID Financial Review
3. Report of the Solano Avenue Business Improvement District Advisory Board
4. November 8, 2007 letter from the Solano Avenue Association

RESOLUTION NO. 63,530-N.S.

CONFIRMING THE YEAR 2006 ANNUAL REPORT OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT (BID), THEREBY LEVYING AN ANNUAL ASSESSMENT FOR THE SOLANO AVENUE BID FOR CALENDAR YEAR 2007

WHEREAS, the Solano Avenue Business Improvement District (BID) Advisory Board submitted an Annual Report to the Berkeley City Council that outlined the activities of the District proposed for the year 2007 as required by California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report was found to be clear and complete and found to comply with the interests of Solano Avenue assessees; and

WHEREAS, on November 14, 2006, the Berkeley City Council adopted a Resolution of Intent which approved the Annual Report, declared its intent to levy assessments on businesses located within the boundaries of the District, and set a public hearing for December 5, 2006, where interested persons may be heard for or against the levying of the assessment; and

WHEREAS, the City Clerk published the Resolution of Intent in a local newspaper of general circulation in compliance with necessary public notice requirements; and

WHEREAS, a public hearing was held allowing all interested parties to speak on the matter; and

WHEREAS, there have not been protests by business owners in the District who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the Solano Avenue BID Annual Report for the year 2006 as submitted to the City Clerk by the Solano Avenue BID Advisory Board is confirmed, thereby levying an annual assessment for the Solano Avenue BID for calendar year 2007 with a modification that the assessment levels shall be reduced 20% from the 2006 assessment levels.

BE IT FURTHER RESOLVED that the final 2007 Workplan for the Solano Avenue BID shall be developed after a public meeting where all Solano Avenue businesspeople have the opportunity to participate.

BE IT FURTHER RESOLVED that the City Manager shall have his staff examine the books and financial records of the Solano Avenue Association to determine how Solano BID monies have been expended over the last three years.

BE IT FURTHER RESOLVED that all future contracts using BID funds shall have an audit provision allowing staff to review how such funds are being spent.

* * * * *

The foregoing Resolution was adopted by the Berkeley City Council on December 12, 2006 by the following vote:


Ayes: Councilmembers Anderson, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.


Noes: None.

Abstain: Councilmember Capitelli.

Absent: None.

Attest:


Pamyla Means, City Clerk


Tom Bates, Mayor



Office of the City Manager

August 8, 2007

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Subject: **Solano Avenue Berkeley BID Financial Review**

At the request of the City Council, staff performed a review of the financial records of the Solano Avenue Berkeley Business Improvement District (BID). The review is attached for your information.

Staff concluded that expenditures were disbursed for the authorized expenditure categories.

Attachment

cc: Pamyia Means, City Clerk
Ann-Marie Hogan, City Auditor
Michael Caplan, Office of Economic Development
Dave Forgarty, Office of Economic Development



Finance Department
Accounting

**Limited Scope Review – Solano Avenue Berkeley
Business Improvement District
August 7, 2007**

To: Phil Kamlarz, City Manager

From: Marvin Tam, CPA, Accounting Manager

A handwritten signature in black ink, appearing to read "Marvin Tam", written over the printed name.

Attached is the limited scope review report on the Solano Avenue Berkeley Business Improvement District for the three years ended December 31, 2004 December 31, 2005 and December 31, 2006.



Finance Department
Accounting

**Solano Avenue Berkeley
Business Improvement District
Limited Scope Review Report
For the Years Ended December 31, 2004, December 31, 2005 and
December 31, 2006**

OBJECTIVES OF THE REVIEW

The Finance Department performed a limited scope review of the revenues and expenditures of the Solano Avenue Berkeley Business Improvement District (BID) for the three years ended December 31, 2004 through December 31, 2006.

The specific objectives of the review were:

- To determine whether revenue and expenditures, cash basis, reported by BID for the reviewed period were fairly stated.
- Revenues were properly recorded and accounted for.
- Expenditures were properly accounted for.
- Expenditures were disbursed for the authorized expenditure categories.

SCOPE AND METHODOLOGY

The BID received the assessment revenues from the City Of Berkeley (City) and the City executed a sole source contract for services with the Solano Avenue Association (SAA) for calendar 2004, 2005 and 2006. Our review was limited to the financial information and documentation relative to the financial statements mentioned above. The Balance Sheets of the BID were not part of the review and we did not examine them accordingly.

To accomplish our review objectives, we have performed the following procedures:

- Obtained copies of the annual contract with SAA;
- Compared revenue recorded to City's financial records;
- Reviewed expenditures by comparing them against BID's accounting records such as general ledgers, invoices, canceled checks and bank statements;
- Interviewed City's staff handling BID;
- Interviewed SAA's bookkeeper who also prepared the financial statements for BID.
- Reviewed expenditures of SAA to determine the fairness and validity of the marketing and administration expenditures.

BACKGROUND

A Business Improvement District is a private sector funding opportunity, which provides the year-to-year financing necessary to give businesses the means to carry out commercial marketing and organizational management programs... and economic success. The BID functions as a self-initiated economic development program funded by an annual benefit fee. This fee is traditionally based on type of business, size, and location as a means of determining the most fair and equitable charge method possible. This benefit fee is traditionally weighted in favor of retailers and restaurants, as the BID is seen as being primarily a commercial marketing program. The fee is billed on the annual business license, collected by the City Of Berkeley, and then distributed in its entirety to the BID district.

On December 9, 2003, the Berkeley City Council adopted an ordinance establishing the Solano Avenue Business Improvement District (BID).

The City Council authorized (Resolution No. 62,390-N.S.) the City Manager to execute a sole source contract and any amendments with the Solano Avenue Association (SAA) to implement programs to improve the Solano Avenue Business District.

ENGAGEMENT

The review was conducted at the request of the City Manager Office to determine if the revenue and expenditures of the BID were properly accounted for; expenditures were spent for the benefits of the BID; and expenditures were supported by proper documentation.

PRIOR REVIEW COVERAGE

This is the first limited scope review applying agreed-upon procedures performed on the Solano Avenue Association BID by the Finance Accounting Office, City Of Berkeley.

REVIEW CONCLUSION

We concluded that the revenue and expenditures, cash basis, reported by BID for the review period were fairly stated. We concluded that the attached restated statements of revenue and expenditures – budget and actual for the three years ended December 31, 2004 through December 31, 2006 were properly recorded and accounted for. Finally, we concluded that expenditures were disbursed for the authorized expenditure categories.

REVIEW FINDINGS

- Solano Avenue Association (SAA) apparently misinterpreted the scope of the BID and incorrectly reported a portion of the financial activities of the SAA as BID activities. As a result, the SAA needed to restate the financial statements to reflect BID activities only.
- There was a duplicate payment for the March 2006 cleaning expenditures of \$850. We were informed that the vendor had been contacted and agreed to repay BID for the duplicate payment.

Solano Avenue Berkeley
 Business Improvement District
 Schedule of Revenue and Expenditures and Changes in Fund Balance - Budget and Actual
 For the Year Ended December 31, 2004

	2004	
	Budget	Actual Variance
Revenue:		
Business Improvement District Assessment	\$ 30,460	\$ 30,460 \$ -
Expenditures:		
Physical:		
Cleaning		7,885
Planters		2,388
Total Physical Expenditures	12,184	10,273 1,911
Marketing:		
Advertising		570
Copy and graphics		26
Allocation of Marketing Expenditures from Solano Avenue Association		11,588
Total Marketing Expenditures	12,184	12,184 -
Administration:		
Allocation of Administration Expenditures from Solano Avenue Association		6,092
Total Administrative Expenditures	6,092	6,092 -
Total Expenditures	30,460	28,549 1,911
Excess of revenue over(under) expenditures	-	1,911 (1,911)
Fund Balance as of January 1, 2004	-	-
Fund Balance as of December 31, 2004	\$ -	\$ 1,911 \$ (1,911)

Solano Avenue Berkeley
 Business Improvement District
 Schedule of Revenue and Expenditures and Changes in Fund Balance - Budget and Actual
 For the Year Ended December 31, 2005

	2005	
	Budget	Actual Variance
Revenue:		
Business Improvement District Assessment	\$ 32,926	\$ -
Expenditures:		
Physical:		
Cleaning		14,750
Planters		3,522
Total Physical Expenditures	<u>16,463</u>	<u>(1,809)</u>
Marketing:		
Advertising		
Copy and graphics		6,585
Allocation of Marketing Expenditures from Solano Avenue Association		6,585
Total Marketing Expenditures	<u>6,585</u>	<u>-</u>
Administration:		
Allocation of Administration Expenditures from Solano Avenue Association		9,878
Total Administration Expenditures	<u>9,878</u>	<u>-</u>
Total Expenditures	32,926	(1,809)
Excess of revenue over(under) expenditures	<u>-</u>	<u>1,809</u>
Fund Balance as of January 1, 2005	-	(1,911)
Fund Balance as of December 31, 2005	<u>\$ -</u>	<u>\$ 102</u>
	<u>\$ 102</u>	<u>\$ (102)</u>

Solano Avenue Berkeley
 Business Improvement District
 Schedule of Revenue and Expenditures and Changes in Fund Balance - Budget and Actual
 For the Year Ended December 31, 2006

	2004	
	Budget	Actual Variance
Revenue:		
Business Improvement District Assessment	\$ 38,000	\$ 34,995 \$ 3,005
Expenditures:		
Physical:		
Cleaning		14,750
Planters		1,505
Total Physical Expenditures	17,498	16,255 1,243
Marketing:		
Advertising		2,040
Copy and graphics		4,959
Allocation of Marketing Expenditures from Solano Avenue Association		6,999
Total Marketing Expenditures	6,999	6,999 -
Administration:		
Copy and graphics		25
Allocation of Administration Expenditures from Solano Avenue Association		10,474
Total Administrative Expenditures	10,499	10,499 -
Total Expenditures	34,996	33,753 1,243
Excess of revenue over(under) expenditures	3,004	1,242 1,762
Fund Balance as of January 1, 2006	-	102 (102)
Fund Balance as of December 31, 2006	\$ 3,004	\$ 1,344 \$ 1,660

SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD

2007 ANNUAL REPORT FOR THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT

Background

On December 5, 2006, the City Council (Resolution No. 63,530-N.S., Attachment 1 to Council Information Report) confirmed the 2006 Annual Report of the Solano Avenue Business Improvement District and levied annual assessments for 2007. The Council did this after hearing protests from a significant number of Solano merchants who objected to what they said was lack of accountability and responsiveness by the Solano BID's contractor, the Solano Avenue Association (SAA). Other merchants supported the SAA and said that it had been doing a good job of administering BID services.

Given the division in the Berkeley Solano merchant community, the Council renewed the assessment but at a reduced rate (20% below 2006) and mandated that the Advisory Board develop a new workplan after a public meeting with Solano Avenue Berkeley merchants.

Review of activities

Assisted by staff from the Office of Economic Development, the the Solano Avenue BID Advisory Board met seven times (January 24, February 8, March 21, April 5, May 24, June 21, and July 3) in an effort to implement the Council mandate expressed in Resolution No. 63,530-N.S.

In addition to participating in a public meeting of merchants on December 6, 2006, in February and March the Advisory Board conducted a mail survey of Berkeley Solano merchants to see what services they valued. Tabulation of the eighty survey responses showed that merchants favored sidewalk cleaning, advertising, and the Solano Stroll in that order, with banners and holiday lighting coming next. Given that BID revenues for 2007 were only \$30,000, the Advisory Board readily agreed that the priorities for expenditure should be sidewalk cleaning, advertising and the Solano Stroll.

The issue of how to contract for these services was much more controversial than the choice of services. Some Advisory Board members wanted three separate contracts for approximately \$10,000 each for sidewalk cleaning, advertising and the Solano Stroll. Only the last contract would be with the SAA and it would grant Berkeley BID members booth privileges for the Stroll but not full SAA membership. These Advisory Board members opposed BID revenues being used to purchase mandatory membership in the SAA for Berkeley merchants when it is voluntary in Albany.

The majority of the Advisory Board, however, favored an allocation to the SAA that would purchase full membership in the SAA for Berkeley BID members. This includes Stroll booth privileges; participation in other SAA events; participation in the script/gift

certificate program; and individual business descriptions in the Solano Director and the Solano website. The SAA itself calculated that membership for Berkeley merchants should cost \$14,636, the same amount as is collected from voluntary memberships in Albany. Although most Advisory Board members had earlier been open to contracting separately for sidewalk maintenance and marketing/advertising, in the end the Advisory Board decided that the SAA should manage these service contracts, though with advice from Advisory Board subcommittees and close oversight from the Advisory Board as a whole.

On July 3, the Advisory Board approved the following motion (Powning/Fischrup:Ayes: Austin, Bellevue, Powning, Snidow, Taghavi, Taylor, Thomas; Noes: Fischrup):

That the Advisory Board recommend to the City Council that 2007 Solano Avenue BID revenues be used to purchase SAA membership for Berkeley merchants at a cost of \$14,636, with the remainder of BID revenues to be spent for sidewalk cleaning and marketing/advertising services. The SAA may take an administrative fee of up to 10% for issuance and monitoring of the contracts for these two services.

Subcommittees of the Advisory Board reviewed potential sidewalk cleaning and advertising/marketing contractors and forwarded their recommendations to the Advisory Board.

A subcommittee headed by Susan Powning nominated "Ultrawash" as sidewalk maintenance contractor and recommended that a contract for monthly washing run from August until November. The cost for this service was \$1,000 per month for a total of \$4,000 plus an administrative fee of \$400 for the SAA. The Advisory Board approved this recommendation at its August 9 meeting (Bellevue/Taylor, unanimous).

A subcommittee headed by Amy Thomas developed a proposal for an advertising/marketing campaign that included an intensive six-week campaign on Comcast cable television stations in San Francisco, Oakland, Berkeley, Marin and Vallejo. The proposal also included an allocation of \$500 to a "Shop Local" program being developed by the Berkeley Business District Network (BBDN) and the Office of Economic Development. The Solano BID's allocation to this effort was \$13,139 that included \$10,944 in 2007 BID revenues and \$2,195 in carryover revenues held by the SAA. The carryover had been identified in the City financial review of SAA-Solano BID financial records. The \$13,139 therefore included: \$500 for "Shop Local" and \$12,639 for cable advertising (including a 10% administrative fee for SAA.) In practice, however, the SAA waived the administrative fee and contributed other funds for a total \$2500 SAA contribution to the cable advertising campaign.

On October 10, the Advisory Board approved Amy Thomas's recommendation to allocate all remaining funds in the 2007 budget to the cable advertising campaign, plus \$500 to the Shop Local campaign (Thomas/Austin, unanimous).

Solano Business Improvement District Expenditures in 2007

\$14,636: Membership in the Solano Avenue Association for Berkeley BID assesseses

\$4,000: Sidewalking cleaning program, August-November

\$400: Administrative fee for SAA

\$13,139: Advertising/marketing, including \$500 for Shop Local and \$12,639 for cable television advertising

\$32,175

Revenue

\$29,980 2007 assessment

\$ 2,195 carryover from SAA

\$32,175

Conclusion

Advisory Board members spent many hours in formal meetings and time between meetings to draft the merchant survey, evaluate its results, develop the service proposals, and evaluate potential contractors. It believes that the services that the BID provided in 2007 have been beneficial to the Berkeley BID members and the Solano Avenue business district as a whole.

Nevertheless, the budget of the BID and the scale of the services it can provide are very modest in relation to the needs of the business district. Given opposition from a vocal contingent of merchants, it is probably impossible to increase the assessment. The modest benefits of renewing the BID must be weighed against the disadvantages of continuing a divisive controversy. While the City's financial review showed that there has been no misappropriation of BID funds, the opponents have persistent in rumors and misrepresentations that have embittered the atmosphere of the business district.

The Advisory Board therefore concurs with the recommendation of the Board of Directors of the Solano Avenue Association that the Berkeley City Council not renew the assessment.

November 8, 2007

Dear Fellow Merchants and Members of Business Improvement District,

After thoughtful consideration the **Solano Avenue Association** recommend that the **Solano Avenue Business Improvement District (BID)** be ended.

Simply put, the BID structure is no longer worth the time and effort.

While we recognize the value of a BID, and have supported it in the past, the BID structure comes with baggage. Those who have volunteered for the BID Board have had far too much of their time siphoned off to deal with a handful of disgruntled merchants to the detriment of important projects. The BID was intended as a streamlined way to gather resources to benefit the Avenue. Instead, the BID Board and the SAA have had their attention continually diverted, sapping energy and resources from positive projects.

We will be recommending to the City of Berkeley that they do not levy the BID assessment as part of your business license for 2008. **The BID Board last night voted to join us in asking the City to stop the BID.** They are informing the City they want the BID stopped. As the BID is actually the smallest in Berkeley – raising only \$29,000 – we hope to continue services to the merchants and the community without losing momentum.

We are asking you to voluntarily join the Solano Avenue Association to assist us in the ongoing work to promote the Avenue.

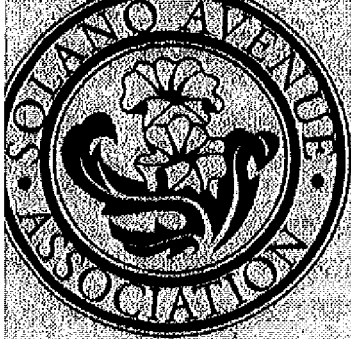
The Stroll went very well and events are rolling our way:
 The **Halloween Pumpkin Party** was successfully launched this October;
 The **Holiday events and festivities** are gearing up (including television advertising)
 The **Lunar New Year Celebration** will be back in February;
 The reconfigured **Spring Art Festival** will be back in the spring;
 The **Solano Stroll** will be back in the Fall.

In addition, we are increasing the sweeping and trash pickup on Solano promoting the Street with advertising buys and trades, and promoting the businesses and the community through a number of other programs. Check on the website and contact us to get more involved.

Thank you for your time and continued good energy,

Sincerely,

The Solano Avenue Association Board of Directors



Solano Avenue Association

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