



REPORT TO COUNCIL City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
January 29, 2008

Honorable Mayor and
Members of the City Council

Title: Resolution of Intent: Establish Sutter Business Improvement Area

Location/Council District: District 3

Recommendation: Adopt a **Resolution** indicating the City's intent to proceed with establishment of a new Sutter Business Improvement Area entailing the levy of assessments on food service businesses in the area bounded by 27th to 29th Streets, between J and P Streets.

Contact: Tom Zeidner, Sr. Economic Development Project Manager, 808-1931

Presenters: None

Department: Economic Development

Division: Citywide

Organization No: 4453

Description/Analysis

Issue: Staff has been in discussions with the ownership/management of several restaurants and nightclubs in an area known as the "Sutter District" (located generally between 27th and 29th Streets, from J to P Streets) concerning possible formation of a new business improvement area (BIA) in the area. The California Streets and Highways Code authorizes cities to establish BIAs for purposes of providing improvements and activities to benefit businesses located within such districts. Food and beverage businesses within the Sutter District are interested in forming a "Sutter Business Improvement Area" (SBIA). The SBIA is proposed to be a benefit assessment district formed to address a need for additional security in the area and to coordinate marketing efforts promoting the Sutter District's identity and attributes as a destination.

If approved by the City Council, the SBIA proposes to levy and collect an annual assessment and occupancy charge from restaurants, bars, nightclubs, diners and other businesses selling prepared food within the boundaries of the SBIA. This structure contemplates collecting one and half percent (1.5%) of establishments' gross food sales (current interpretation of state law does not

allow for like assessment of alcohol sales). The occupancy charge would be set between \$10,000 and \$1,000 annually, based on business type and seating capacity. Smaller establishments will not be subject to the occupancy charge, while those with seating capacities of 49 or less will be exempt from the 1.5% assessment.

The intent of the SBIA in levying these assessments is to fund a budget of approximately \$200,000 to pay for services within the Area. The proposed services are to include security, marketing and promotions, and support of the B Street Theater. Security, expected to account for 70% of the Area's budget initially, will focus on control of late-night crowds and their impacts on nearby residential areas.

The attached Resolution indicates the City intent to establish the SBIA, levy the assessments described above and conduct both a public meeting and a public hearing at later dates to consider formal approval of the SBIA. Staff will be reporting back to the City Council with further details of the SBIA and its mission in connection with the public meeting and hearing.

On November 13, 2007, the City Council adopted a similar resolution related to formation of the proposed SBIA. The attached Resolution reflects changes requested by SBIA proponents to the assessment formula and intended administration of the entity upon its formation.

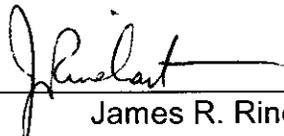
Policy Considerations: The actions described in this report are consistent with the City planning efforts including the Economic Development Strategy which encourages the establishment of additional BIAs in commercial areas of the City.

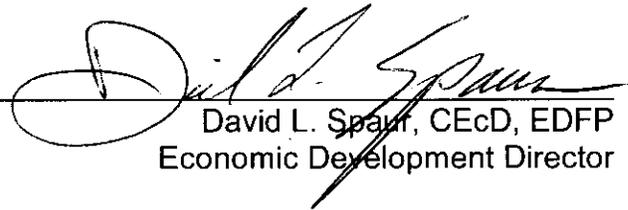
Environmental Considerations: The requested actions are not a project as defined by CEQA as they do not involve activities that may cause a direct or indirect impact on the environment. Environmental review will be performed in conjunction with specific projects related to the actions described in this report.

Rationale for Recommendation: These actions are consistent with earlier-adopted City planning efforts, including the Economic Development Strategy.

Financial Considerations: Upon final approval of the SBIA by the City Council, the City will incur costs in connection with its collection of the assessments and charges described in this report. To ensure reimbursement of such costs, the attached Resolution contemplates the City retaining \$5,000 annually from the funds it collects on behalf of the SBIA, to be adjusted upward based on yearly changes in the U.S. Consumer Price Index.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by : 
James R. Rinehart
Citywide Development Manager

Approved by: 
David L. Spurr, CEcD, EDFP
Economic Development Director

Recommendation Approved:


Ray Kerridge
City Manager

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**Attachment 1
Resolution**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SACRAMENTO DECLARING ITS INTENTION TO ESTABLISH THE
SUTTER BUSINESS IMPROVEMENT AREA (SBIA), DECLARING ITS
INTENTION TO LEVY AN ASSESSMENT ON RESTAURANT
BUSINESSES WITHIN SUCH DISTRICT FOR FISCAL YEAR 2008-09,
AND FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A
PUBLIC HEARING THEREON AND GIVING NOTICE THEREOF**

BACKGROUND

- A. The City council of the City of Sacramento (City) is interested establishing the Sutter Business Improvement Area (SBIA) and levying an annual assessment on restaurant businesses, which include restaurants, bars, nightclubs, diners, and all other businesses that sell prepared food within the proposed SBIA.
- B. The Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Section 36500 et seq. (the Law), authorizes cities to establish business improvement areas for the purpose of providing improvements and activities that benefit those businesses.
- C. Restaurant businesses within the proposed SBIA have requested the City Council establish such an improvement area.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY
COUNCIL RESOLVES AS FOLLOWS:**

Section 1. This supercedes any prior resolution concerning the SBIA. The City Council declares its intention to establish the SBIA and to levy and collect annual assessments against restaurant businesses within the SBIA boundaries pursuant to the Law, commencing with fiscal year 2008-09 (July 1, 2008 through June 30, 2009).

Section 2. The boundaries of the SBIA shall be the area bounded by 27th Street, 29th Street, J Street, and P Street, as shown on the map attached hereto as Exhibit A and incorporated herein by such attachment.

Section 3. The name of the business improvement area shall be the "Sutter Business Improvement Area."

Section 4. The City Council hereby declares that the types of improvements and activities to be funded by the levy of assessments against restaurant businesses within the SBIA are additional security, maintenance and

marketing programs to promote the Sutter Area as an attractive destination for dining and projects, programs, and activities that benefit restaurant businesses located and operating within the boundaries of the district. The proposed improvements and activities shall be targeted at increasing restaurant business revenues.

Section 5. The proposed assessment is to be levied on all restaurant businesses, which include restaurants, bars, nightclubs, diners, and all other businesses that sell prepared food within the proposed SBIA based upon one and a half percent (1.5%) of the gross prepared food sales plus a charge for occupancy. The occupancy charge shall be \$10,000 per year for those establishments with occupancy greater than 200, \$5,000 per year for those establishments with occupancy between 150 and 200, \$1,000 per year for those establishments with occupancy between 90 and 149 and \$0 per year for those establishments with occupancy under 90. Based on reduced benefit, any restaurant business whose seating occupancy is less than 49 shall not be assessed.

Section 6. New restaurant businesses within the boundaries of the SBIA shall not be exempt from the levy of assessment.

Section 7. Except where funds are otherwise available, an assessment will be levied annually against restaurant businesses to pay for the improvements and activities within the SBIA commencing with fiscal year 2008-09.

Section 8. The City of Sacramento shall be responsible for the collection and enforcement of assessments from restaurant businesses within the SBIA. An annual administrative fee of \$5,000 will be paid to the City to offset the cost associated with the collection and enforcement of assessments. The annual administrative fee shall be increased based upon changes in the U.S. Consumer Price Index for the San Francisco area. The City shall retain as its funds any additional collection fees, penalty fees, and interest collected associated with collections or actions due to nonpayment of assessments. Assessments shall be collected in such installments as determined by the City's Finance Director (Finance Director).

The City Council may provide for administration of the SBIA's activities by entering into an agreement with an entity, that in the opinion of the City Council will have the capacity of representing the interests of the restaurant businesses in the SBIA, whose general objectives will be consistent with the purposes of the SBIA, and who will provide the resources to effectively achieve those objectives. However, in such event, the City Council shall reserve unto itself sole discretion as to how the revenue derived from the assessments hereunder shall be used within the scope of the said authorized purposes.

Each restaurant business operator (Operator) in the SBIA shall make a report (Report) to the Finance Director on forms provided by the City, of the amount of assessment due for that reporting period. The Report and assessment become delinquent 14 days after they are due. The full amount of the assessment calculated shall be remitted to the Finance Director at the time the Report is filed. The Finance Director may establish shorter reporting or remitting periods for any Operator and may require additional information in any Report. Reports and payments are due immediately upon cessation of business by an Operator for any reason. Each Report shall contain a declaration under penalty of perjury, executed by the Operator or its authorized agent, that, to the best of the declarant's knowledge, the statements in the Report are true, correct and complete.

Any Operator who fails to remit any assessment within 14 days of the due date shall pay a penalty of twenty percent (20%) of the amount of the assessment in addition to the amount of the assessment.

If an Operator fails to remit any delinquent remittance within sixty (60) days, the City may file a complaint against such Operator. In addition to penalties imposed, any Operator that fails to remit any assessment shall pay interest at the rate of five percent (5%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent, until paid.

If the Finance Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above.

Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid by this Resolution.

Disputes regarding SBIA assessments must be made in writing to the City's Revenue Manager (Revenue Manager). The Revenue Manager shall investigate disputes so received and, based upon the findings of such investigation, render a response in writing. Appeal of any Revenue Manager's response pursuant to this chapter shall be requested in writing to the Finance Director within 10 days of the date of the Revenue Manager's response.

Section 9. All assessments imposed shall be reviewed by the City Council annually, based upon the annual report prepared by the Finance Director.

Section 10. The City Council shall appoint an advisory board pursuant to Sections 36530 of the Law to, among other duties imposed by the Law, make

recommendations to the City Council on the expenditure of revenues derived from any levy of assessments.

Section 11. The City Council may disestablish the SBIA after holding a public hearing on the disestablishment. The City Council shall adopt a resolution of intention to disestablish the area prior to the public hearing. The resolution must state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the SBIA.

Section 12. The City Council hereby sets March 11, 2008 as the date for a public meeting (Meeting) on the establishment of the SBIA and the levy of assessments and March 25, 2008 as the date for a public hearing (Hearing) on the establishment of the SBIA and the levy of assessments. Both the Meeting and Hearing will be held at 2:00 p.m., or as soon thereafter as practicable, in the City of Sacramento City Hall, Council Chambers, 915 I Street, Sacramento, California.

Section 13. At the Meeting and Hearing, the testimony of all interested persons for or against the establishment of the SBIA, the extent of the SBIA, or the furnishing of specified types of improvements or activities will be heard. A protest may be made orally or in writing by any interested person.

Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly state the irregularity or defect to which objection is made. To count in the determination of a majority protest against the SBIA, a protest must be in writing.

Written protests must be received by the City Clerk, City of Sacramento before the close of the Public Hearing scheduled herein and may be delivered or mailed to Shirley Concolino, City Clerk, City of Sacramento, 915 I Street, HCH-Room 116, Sacramento, California 95814. A written protest may be withdrawn in writing at any time before the conclusion of Hearing.

Each written protest shall contain a written description of the business in which the person signing the protest is interested sufficient to identify the business. If the person signing the protest is not shown on the official records of the City of Sacramento as the owner of the business, then the protest shall contain or be accompanied by written evidence that the person is the owner of the business.

A written protest which does not comply with this section shall not be counted in determining a majority protest.

Section 14. If, at the conclusion of the Hearing, written protests are received from the owners of businesses in the proposed SBIA which will pay fifty percent (50%) or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protest to less than that fifty percent (50%) (i.e., there is a majority protest), no further proceedings to create the SBIA, as contained in this Resolution of Intention, shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. The specific assessment amount shall be determined by the City's Finance Director. If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the SBIA, those types of improvements or activities shall be eliminated.

Section 15. Further information regarding the proposed SBIA may be obtained from the Economic Development Department, City of Sacramento, 1030 15th Street, 2nd Floor, Sacramento, California 95814.

Section 16. The City Clerk is instructed to provide notice of the Meeting and Hearing in accordance with the Law.

Section 17. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

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Exhibit A – map

Proposed Sutter Business Improvement District (SBID)

