



REPORT TO COUNCIL

City of Sacramento

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Staff Report
March 11, 2008

**Honorable Mayor and
 Members of the City Council**

Title: Proposed Ordinance – Sutter Business Improvement Area

Location/Council District: District 3

Recommendation: 1) Review an Ordinance establishing the 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; and 2) pass for publication the Ordinance title as required by Sacramento City Charter 32c to be considered by the Council on March 25, 2008.

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

Presenters: Tom Zeidner

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, map attached) concerning possible formation of a new business improvement area (BIA) in the area. The California Streets and Highways Code authorizes cities, following a public meeting and public hearing, 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.

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 one-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 \$1,000 and \$10,000 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. These and other provisions of the proposed SBIA are described within the attached draft Ordinance that, if approved by Council, will establish the business improvement area.

The intent of the SBIA in levying these assessments is to fund a budget of approximately \$180,000 to pay for services within the Area. The proposed services are to include security, marketing and promotions. 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.

On January 29, 2008, the Council adopted a Resolution of Intent to establish the SBIA. Following that action and pursuant to the California Streets and Highways Code, notices describing the proposed SBIA and its adoption process were mailed to all food service businesses that will be subject to the assessments. Subsequent to the noticing, the California Code requires a public meeting scheduled for March 11, 2008 to hear testimony from interested parties concerning the proposed BIA and ordinance, to be followed by a Public Hearing. The Public Hearing is currently scheduled for March 25, 2008, at the conclusion of which the Council can consider approval of the Ordinance establishing the SBIA.

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 Ordinance establishing the SBIA will enable the City to retain \$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. Concurrent with the Public Hearing and consideration of the Ordinance, currently scheduled for March 25, 2008, staff will seek authority to establish a new City fund into which assessments collected on behalf of the SBIA will be deposited.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 
James R. Rinehart
Citywide Economic Development Manager

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

Recommendation Approved:

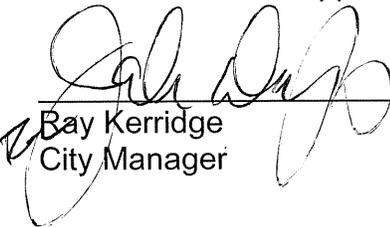

Ray Kerridge
City Manager

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Attachment 1

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SACRAMENTO TO
ESTABLISH THE SUTTER BUSINESS IMPROVEMENT AREA (SBIA), AND TO LEVY
AN ASSESSMENT ON RESTAURANT BUSINESSES WITHIN SUCH DISTRICT**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO

SECTION 1 Authority. This chapter is adopted pursuant to 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 and Resolution of Intention No. 2008-042 and titled “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.” Such resolution was published and mailed as provided by law, and hearings thereon were held by the city council at its regular meeting on March 11, 2008, for a public meeting, and March 25, 2008, for a public hearing, on the establishment of the SBIA and the levy of assessments. The city council duly concluded the hearing on March 11, 2008, and determined that protests objecting to the formation of the area have not been made by a majority of the businesses within the area and that such protests are overruled and denied. The city council finds that the business and improvement area, in the opinion of the city council, will be benefited by the expenditure of the funds raised by the charges proposed to be levied.

SECTION 2 Area established. There is established a business improvement area which shall be known as the “Sutter Business Improvement Area” of the city of Sacramento, herein referred to as the “SBIA” for brevity and convenience. 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 Authorized Uses. 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 improvements and activities shall be targeted at increasing restaurant business revenues.

SECTION 4 Levy of charge in addition to business operations tax. Except where funds are otherwise available, commencing with fiscal year 2008-2009 there is imposed a charge for the purposes authorized in Section 4, which charge is in addition to the ordinary business operations tax as it is imposed upon businesses conducting their activities within the area by Section 3 of this code. Such additional charge is imposed at the rates set forth in Section 5 of this chapter for the specified business classifications regardless of whether the business is taxed upon a flat rate or gross receipts or other basis under the provisions of this code.

SECTION 5 Classification of businesses and charges imposed. The 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 Exemption and voluntary contribution. New restaurant businesses within the boundaries of the SBIA shall not be exempt from the levy of assessment. Any business, person or institution located in the area, which is exempt from the payment of the ordinary business operations tax of the city by reason of the provisions of the laws of the United States or the city or by reason of the provisions of the United States or California Constitutions, is not to be charged under this proceeding but may make a voluntary contribution to the city. Such contributions shall be used for the purposes provided in this chapter.

SECTION 7 Disestablishment of area. 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 8 Administration. 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.

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

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.

The collection of the charges imposed hereunder shall be made at the same time and

in the same manner as the general business operations tax under Chapter 3.08 of this code, commencing January 2, 1986. A special fund is created, known as the “Sutter business improvement area fund,” and the charges imposed by this chapter shall be deposited in such fund.

SECTION 9 Disestablishment of area. 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 10 Payment of charge. The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business operations tax, commencing FY 2008-09. A special fund is created, known as the “Sutter Business Improvement Area Fund,” and the charges imposed by this chapter shall be deposited in such fund.

Exhibit A – map

Proposed Sutter Business Improvement District (SBID)

