



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** June 14, 2021

Approved *[Signature]*

Date 06/17/21

**COUNCIL DISTRICT: 3**

**SUBJECT: PUBLIC HEARING AND ADOPTION OF A RESOLUTION TO APPROVE THE 2021-2022 BUDGET REPORT, TO LEVY DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ASSESSMENTS FOR THE FISCAL YEAR 2021-2022 AND TO SUSPEND THE COLLECTION OF THE ASSESSMENTS FOR BUSINESSES THAT QUALIFY FOR A BUSINESS TAX FINANCIAL HARDSHIP EXEMPTION UNDER THE CITY’S GENERAL BUSINESS TAX ORDINANCE**

**RECOMMENDATION**

Conduct a public hearing and adopt a resolution to:

- (a) Approve the Downtown Business Improvement District budget report for Fiscal Year 2021-2022 as filed or modified by Council;
- (b) Levy the Downtown Business Improvement District assessments for Fiscal Year 2021-2022; and
- (c) Suspend collection of the Downtown Business Improvement District assessments for businesses that qualify for a Business Tax financial hardship exemption under the City’s General Business Tax Ordinance.

**OUTCOME**

Approval of this action will result in the levy of assessments for the upcoming fiscal year of the Downtown Business Improvement District and will exempt businesses from the Downtown BID assessments if they qualify for a financial hardship exemption under the City’s general business tax ordinance.

## **BACKGROUND**

The Downtown Business Improvement District ("BID") was established by Council in 1988 pursuant to the California Parking and Business Improvement Area Law ("BID Law") to promote the economic revitalization and physical maintenance of the Downtown Business District service area as shown in Attachment A. In 1989, Council appointed the Downtown Association as the Advisory Board ("Advisory Board") for the BID, to advise Council on the levy of assessments in the BID and the expenditure of revenues derived from the assessments for the benefit of the BID.

Pursuant to BID Law, an annual public hearing is required in order to approve the annual budget report and levy the annual BID assessments. On June 15, 2021, the Council set June 29, 2021 at 1:30 p.m. as the date and time for the public hearing on the proposed 2021-2022 assessments. On June 15, 2021, the Council preliminarily approved the 2021-2022 budget report as filed by the Advisory Board or as modified by the City Council and adopted a resolution of intention to levy the annual assessments for fiscal year 2021-2022 in the BID. The 2021-2022 Annual Report ("report") and Budget submitted to the Council on June 15, 2021 is attached to this memo as Attachment B and C, respectively.

As part of its annual budget report, the Advisory Board is recommending that the Downtown BID assessments be suspended for those businesses that qualify for a financial hardship exemption under the City's general business tax as set forth in Section 4.76.345 (Financial hardship exemption for low generating small businesses) and Section 4.76.345.5 (Financial hardship exemption for small business owners with limited household incomes) of the Municipal Code.

In order to qualify, the business must be a sole proprietorship which means a business owned and operated by one person or owned and operated jointly by a husband and wife or domestic partners, without other principals or employees, where its gross receipts do not exceed the poverty level established by the Department of Health and Human Services for a single person (multiplied by 2) for the calendar year in which the assessment is due, or a small business owner where the adjusted gross income of the small business owner and the small business owner's spouse or domestic partner, added together, do not exceed the poverty level established by the Department of Health and Human Services for a single person (multiplied by 4). It is anticipated that the impact to City Finance's collection efforts of the Downtown BID will be negligible because of the small segment of downtown businesses likely to apply and be eligible for the financial hardship program.

## **ANALYSIS**

When a hearing is held under BID Law with regard to the levy of assessments of a BID, the City Council shall hear and consider all protests against the continued authorization of the BID, the extent of the area, the assessments, or the furnishing of specified types of improvements or

activities. Protests may be made orally or in writing. Written protests must be filed with the City Clerk at or before the time fixed for the public hearing. BID Law requires that the proceedings shall terminate if protests are made in writing against the continued authorization of the BID by businesses or property owners in the proposed district that will pay a majority of the charges to be assessed. If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those improvements or activities shall be eliminated.

The Advisory Board has prepared an Annual report (“report”) and Budget attached as Attachment B and C, respectively, for Council’s consideration as the proposed budget for the Downtown BID for Fiscal Year 2021-2022. As required by BID Law, the report has been filed with the City Clerk and contains, among other things, a list of the improvements and activities proposed to be provided in the BID in Fiscal Year 2021-2022, an estimate of the cost of providing the improvements and activities, and a recommendation to suspend the collection of the Downtown BID where a business qualifies for a financial hardship exemption under the City’s general business tax ordinance. The Advisory Board has recommended no change to the BID boundaries. The Advisory Board has included a clarification of the existing Apartments/Hotels category for residential landlords leasing 1 and 2 units. These landlords of 1 and 2 units will pay \$150 while residential landlords of 3 or more units will continue to pay \$264. Residential landlords of 1-2 units are currently being charged \$264 and the Board proposes reducing the rate to \$150. Residential landlords of 1-2 units billed \$264 for the prior two years will receive a credit for the difference. Otherwise, there are no changes in the method and basis for levying assessments.

During the course or upon the conclusion of the public hearing the City Council may order changes in any of the matters provided in the Advisory Board’s report. At the conclusion of the public hearing the City Council may adopt a resolution confirming the report as originally filed or as modified by the Council. The adoption of the resolution constitutes the levy of the assessment for the fiscal year 2021-2022 and suspension of the BID assessments in certain instances as noted above.

### **CONCLUSION**

Approval of this action will result in the adoption of a resolution to levy the assessments for the upcoming fiscal year of the Downtown BID as set forth herein.

### **EVALUATION AND FOLLOW-UP**

The Advisory Board will come before Council next year to present a report that proposes a budget for the 2022-2023 fiscal year.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

In accordance with the BID Law, the City Clerk has published the required legal notice with regard to the levy of assessments for fiscal year 2021-2022. The budget for Fiscal Year 2021-2022 was reviewed and approved at the Advisory Board’s meeting on April 1, 2021.

This memorandum will be posted on the City’s website for the June 29, 2021 City Council agenda.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office, the Finance Department, Planning, Building and Code Enforcement, the City Manager’s Budget Office, the Downtown Business & Professional Association, and the City Clerk’s Office.

### **COMMISSION RECOMMENDATION/INPUT**

Not applicable for this project.

### **FISCAL/POLICY ALIGNMENT**

This action is consistent with the Economic Development Strategy approved by Council, specifically Initiative No. 1, “Encourage Companies and Sectors that Can Drive the San Jose/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure” and Initiative No. 10, “Continue to Position Downtown as Silicon Valley’s City Center.” A healthy Business Improvement District will encourage growth of the retail community and consequently result in additional sales tax revenue for the City.

### **COST SUMMARY/IMPLICATIONS**

Adoption of the proposed Downtown BID budget does not directly impact City revenue. It is anticipated that a healthy Downtown Business Improvement District will encourage growth of the retail community, which indirectly generates business tax and sales tax revenue for the City.

The Downtown BID assessments are restricted for use exclusively by the Downtown BID and it is estimated at \$630,000 in 2021-2022. However, due to the timing of the development of the 2021-2022 Proposed Operating Budget and the final adoption of the Downtown BID budget, \$603,000 was allocated in the 2021-2022 Proposed Operating Budget in the Business Improvement District Fund for this purpose. As part of the 2020-2021 Year-End Budget Process, budget adjustments for this fund were brought forward for City Council approval, on June 15, 2021, as part of Manager’s Budget Addendum 35 that was included in the Mayor’s June Budget Message for Fiscal Year 2021-2022.

**BUDGET REFERENCE**

For Budgeting purposes, the table below identifies the fund and appropriation proposed to fund the City’s assessment recommended as part of this memorandum. The BID assessments are collected by the City and then passed through to the BID.

Fund #	Appn #	Appn. Name	Total Appn.	Rec. Budget Action	2021-2022 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
351	2526	Downtown Business Improvement District	\$603,000	N/A	IX-15	N/A

\* The 2021-2022 Operating Budget was reviewed and approved by City Council on June 15, 2021 and adopted on June 22, 2021.

**CEQA**

Statutorily Exempt, CEQA Guidelines Section 15061(b), Review for Exemption, File No. PP08-048.

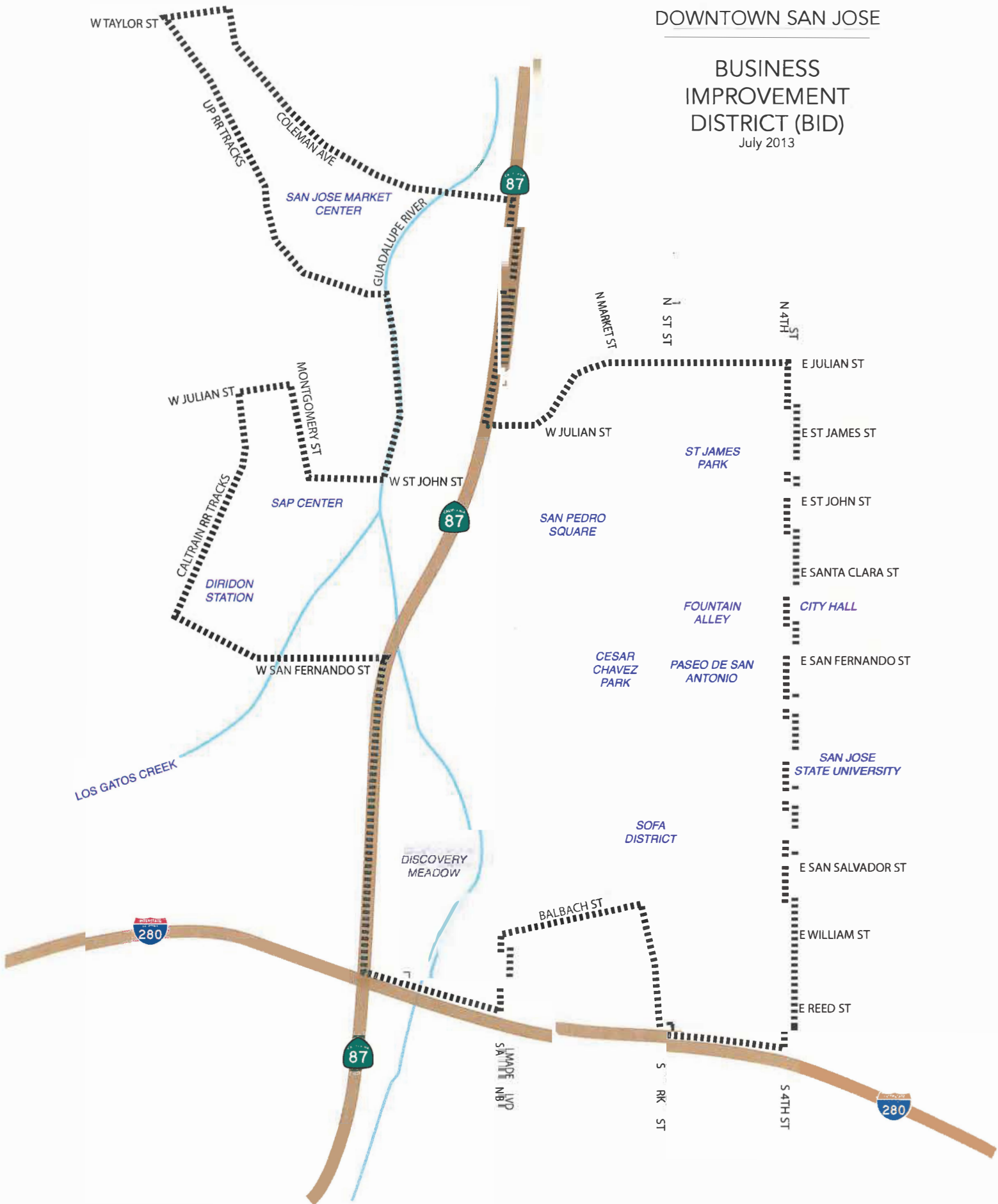
/s/  
NANCI KLEIN  
Director of Economic Development

For questions, please contact Sal Alvarez, Executive Analyst, at (408) 793-6943.

DOWNTOWN SAN JOSE

BUSINESS  
IMPROVEMENT  
DISTRICT (BID)

July 2013



## Exhibit 2 – Downtown BID Report for FY 2021-2022

April 1, 2021

### Downtown BID Report for Fiscal Year 2021-22

1. The boundaries of the Downtown BID are as follows: I-280 at Fourth Street west along Reed Street to west side of Market Street to south side of Balbach Street to east side of Almaden Boulevard to continue on West Reed Street to Highway 87, Highway 87 north to West San Fernando Street, south side of West San Fernando Street to CalTrain tracks, CalTrain tracks to West Julian Street, south side of West Julian Street east to Montgomery Street, west side of Montgomery Street south to south side of West St. John Street to the Guadalupe River, north along east side of the Guadalupe River to the western most set of Union Pacific Railroad tracks, north side of the Union Pacific Railroad tracks north to West Taylor Street, south side of West Taylor Street east to Coleman Avenue, southwest side of Coleman Avenue east to Highway 87, Highway 87 south to West Julian Street, both sides of West Julian Street east to First Street, south side of East Julian Street east to Fourth Street, both sides of Fourth Street south back to I-280. See Exhibit 3.
2. As of July 1, 2014, businesses that are exempt from paying the City’s Business Tax under Chapter 4.76 of the San Jose Municipal Code no longer pay the Downtown Business Improvement District assessment fee. If the business qualifies for the hardship exemption for the City of San Jose Business License Tax, the business will automatically qualify for the BID assessment fee waiver.
3. The Downtown BID will assess current year BID charges only when a business within the Downtown BID already in possession of a Business License and already assessed the Business License Tax is discovered to have not been assessed the BID in previous years.
4. Improvements and activities for FY 2021-22: See Exhibit 2
5. An estimate of the total cost of providing the improvements and activities for fiscal year 2021-22 is approximately \$2,265,500. Estimated BID funds of \$630,000 contribute to total program and staffing costs. Additional costs estimated at \$1,635,600 are paid through Downtown Association revenue raised through programs and activities, project City of San Jose contract services, Property Based Improvement District, grants, and other sources.
6. The current method and basis for levying the annual assessment are as follows:

CATEGORY	PROPOSED RATE
I. Retail	\$29.04 per FTE/\$264 min.
II. Non-Retail	\$19.35 per FTE/\$185 min.
III. Apartments & Hotels	\$7.92 per room/\$264 min.

(residential landlords of 1-2 units \$7.92 per room/\$150 min)  
(residential landlords of 3 or more units \$7.92 per room/\$264 min)

IV.	Parking Lots	see commercial landlord	
V.	Non-profits		\$100
VI.	Independent Contractors/Rolling Vendors		\$55
VII.	Commercial Landlords/Parking Lots		
	Less than 10,000 square feet		\$440
	10,001 to 50,000 square feet		\$990
	50,001 to 100,000 square feet		\$1,540
	More than 100,000 square feet		\$2,200

Maximum annual charge in all categories is \$6,000.

If any single business falls into more than one category, charges are assessed based upon the category producing the highest revenue for the BID.

7. Total Downtown Association program and staffing costs are funded by the following sources of revenue, in addition to assessment district revenue of \$630,000: Downtown Association revenue raised through programs and activities, project City of San Jose contract services, Property Based Improvement District, grants, and other sources (estimated): \$1,635,600.



**Exhibit 3 – Downtown BID Budget for FY 2021-2022**

<b>REVENUE</b>	<b>Amount</b>
BID FY 2021-22 (Estimated)	\$630,000
<b>Total Revenue</b>	\$ 630,000
<b>EXPENSE</b>	
Operating / Administration	\$190,000
Downtown Lights	\$80,000
Farmers' Market	\$45,000
Music in the Park	\$15,000
Dine Downtown	\$25,000
Marketing and Advertising	\$76,000
Communications/Publicity	\$71,000
Parking Promotions	\$10,000
District Promotions (SoFA, San Pedro Square, Historic)	\$21,000
Downtown for the Holidays	\$10,000
Membership & Partnership Services	\$40,000
Planning, Research & Advocacy	\$47,000
<b>Total Expenses</b>	\$630,000

**Notes:**

1. Program budget are estimates. Additional or unused BID revenue will be applied to similar programs or carry forward into the next year.