



CITY OF SACRAMENTO

48

DEPARTMENT OF FINANCE
DIVISION OF REVENUES AND COLLECTIONS
915 I STREET
ROOM 104
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5681

CITY MANAGER'S OFFICE
RECEIVED
OCT 23 1980

MICHAEL L. MEDEMA
REVENUES AND COLLECTIONS OFFICER

October 23, 1980

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Council Requested Staff Reports Related to the Old Sacramento Business Improvement Area

SUMMARY

At its October 21, 1980 meeting the Council directed staff to provide reports clarifying certain issues related to the Old Sacramento Business Improvement Area. Staff had recommended these reports be deferred since a petition for disestablishment had been filed and if the area was disestablished, the reports would need not be prepared (staff report dated October 15, 1980 attached as Exhibit 1). However, the Council determined the reports would be helpful in its deliberations and directed they be prepared.

BACKGROUND

The reports requested are:

1. A determination of a fair flat charge to be assessed those businesses whose business is exempt from the tax levied by City Code Chapter 23 (liquor sales, banks and financial corporations and others).
2. A determination how multi licensed businesses (restaurant and dance combination for instance) would be assessed and how they would be classified to vote pursuant to City Code Section 23.731.
3. A determination how a business having a portion of its business within the area and a portion of its business outside the area (commercial lessors) will be assessed for the additional charge and their voting position pursuant to City Code Section 23.731.
4. A determination of the legality of City Code Section 23.731 which permits disestablishment proceedings of the area to be initiated by a petition signed by a majority of the businesses within the area rather than requiring the petitioners to represent those businesses paying a majority of the additional charge.

APPROVED
BY THE CITY COUNCIL

OCT 28 1980

OFFICE OF THE
CITY CLERK

DISCUSSION1. Report on Fair Flat Charge

At its August 5, 1980 meeting Council directed staff to explore a fair method for assessing businesses whose gross sales were either partially or wholly exempt from City Code Chapter 23 and therefore exempt from the additional charge for the Area. The primary focus of the discussion centered on liquor sales. At that meeting the City Attorney indicated a charge based upon a percentage of liquor sales or based upon a sliding scale of liquor sales would not be possible. A fixed flat charge for those businesses engaging in liquor sale was suggested as an alternative.

Determining an equitable flat charge on liquor sales would be an easy task if all such businesses were similar in nature and had a similar total of liquor sales. However, the businesses within the area engaged in liquor sales do not fit this ideal mold. The spectrum begins with businesses whose liquor sales are incidental to the total operations and ends with businesses whose liquor sales are the primary source of total sales. A further complication is the broad range of total gross sales of the operations involved.

As the proceeding discussion indicates, any flat charge adopted could be considered unfair in term of equitably of the assessment to a percentage of sales and total gross. Faced with this fact, staff recommends no further considerations of this matter be made by the Council.

2. Multi Licensed Businesses

Each business who has been required to purchase more than one certificate for its operations (restaurant and dance) will be assessed the additional charge for each certificate. This is consistent with City Code Section 23.728 which states the "... charge is in addition to the ordinary business license tax as it is imposed upon businesses ..." Extension of this logic has been applied to the voting status of multiple licensees pursuant to City Code Section 23.731. Each business license tax certificate will be counted as a vote.

3. Multi Location Businesses

Lessors of commercial property are taxed pursuant to City Code Section 23.611 on their total gross receipts. Based upon the amount of gross receipts, the businesses fall with tax brackets with a range of \$6,000. to a final range of \$1,000,000. The City does not have a requirement that the lessors provide detail of the gross receipts by location leased. Identification of the gross receipts attributable to a specific building or group of buildings within an area and the subsequent tax collected is not possible at this time. Further if the gross receipts could be determined by location, the amount of the receipts may not be of an amount to cause an increase or decrease for the businesses tax bracket. If the businesses

were required to furnish gross receipts by location and if the receipts attributable to the proposed area were considered as first collected receipts for the additional charge calculations, then these businesses could be effectively made to pay the additional charge. Both of the above conditions would require amendments to provisions of City Code Chapter 23 including sections not within the sections relating to the area.

4. Legality of City Code Section 23.731

This issue was addressed by the City Attorney in correspondence to Mr. DiGiorgio dated September 2, 1980. The Letter (Exhibit 2) was sent to both the proponents and opponents of the issue and clearly indicates the City's position. Essentially the City Council's action of August 5, 1980 was proper and valid.

ANALYSIS

The staff reports provide answers to the questions raised by the proponents and opponents of the Area. It is doubtful that the answers will satisfy either side. To date, each point clarified for one side of the issue has caused additional questions to be raised. Both sides of the basic issue i.e. should the Old Sacramento Business Improvement Area remain as adopted by City Ordinance No. 4399 have indicated the other has distorted data obtained from the City to their own end. As the pendulum of opinion on the merits of the Area swings from side to side, the side losing momentum raises additional questions to buy time for their position. These measures are not entirely relevant to the staff recommendation made October 21, 1980 regarding the petition for adoption of a resolution of intent to disestablish the area. Pursuant to City Code Section 23.731, once a petition to such end is filed by a majority of businesses within the area, the City Council shall adopt such a resolution and act upon it as provided. Staff continues to recommend the City Council adopt a resolution of intent to disestablish the Old Sacramento Business Improvement Area.

RECOMMENDATION

It is recommended the City Council:

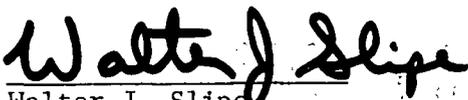
1. File the reports contained in this communication.
2. Adopt a resolution of intent to disestablish the Old Sacramento Business Improvement Area established by City Ordinance No. 4399.

Respectfully submitted,



Michael L. Medema
Revenues & Collections Officer

Recommended Approval:



Walter J. Slipe
City Manager



CITY OF SACRAMENTO

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 DIVISION OF REVENUES AND COLLECTIONS
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MICHAEL L. MEDEMA
 REVENUES AND COLLECTIONS OFFICER

October 15, 1980

City Council
 Sacramento, California

Honorable Members in Session

SUBJECT: Petition to Disestablish Old Sacramento Business Improvement Area

SUMMARY

On Friday, October 10, 1980, a petition to disestablish the Old Sacramento Business Improvement Area created by City Ordinance No. 4399 adopted August 5, 1980 was filed with the City Clerk.

BACKGROUND INFORMATION

The City Council established the Old Sacramento Business Improvement Area at the August 5, 1980 meeting of the City Council. During the course of the hearing conducted on this matter, several members of the public conducting business in the area expressed dissatisfaction with the pending action. After deliberation the Council adopted the ordinance creating the Area. Those members of the public in opposition were advised of their right to initiate repeal of the action taken. Additionally the Council directed staff to report back to Council on the following matters within 90 days of the meeting:

1. Establishment of a flat charge on those businesses conducting business which is exempt from the Business License Tax Certificate imposed by Chapter 23 (liquor related sales and others).
2. The legality of City Code Section 23.731 as written which makes dissolution possible on the vote of a majority of businesses within the area filing protest.
3. How multi licensed businesses would be charged.

DISCUSSION

Disestablishment of the Old Sacramento Business Improvement Area can be initiated by City Council action or by petition of a majority of the businesses within the area according to City Code 23.371. Establishing the validity of the petition filed will require verification of the signatures as authorized representation of the businesses, verification the signatures were obtained as prescribed by City Code Section 23.371 and certification that the businesses represent a majority of the businesses within the area. Upon the establishment of the validity of the petition, the City Council is compelled to adopt a resolution to disestablish the area and proceed with publishing the resolution, noticing

the businesses and holding public hearings.

The petition filed allegedly represented 106 businesses out of the average of 180 businesses listed as active accounts within the last several months according to City records. Based upon this seemingly majority of businesses, staff is proposing that the City Council initiate a resolution to disestablish the Area and thus eliminate the taxpayers expense of establishing the validity of the petition.

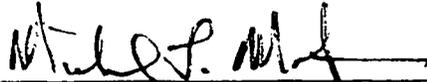
Additionally the staff reports requested by the Council related to the Area will become irrelevant in event of passage of a resolution to disestablish the area. Staff recommends that these reports be ordered deferred until this issue is decided to save the cost of developing the reports and the Council's time of hearing.

RECOMMENDATION

It is recommended that the City Council:

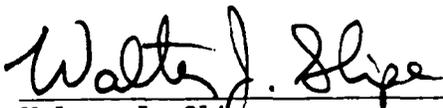
1. Adopt a resolution of intent to disestablish the Old Sacramento Business Improvement Area established by City Ordinance No. 4399.
2. Instruct staff to defer preparation of the reports related to that Area pending the resolution of the disestablishment issue.

Respectfully submitted,



Michael L. Medema
Revenues & Collections Officer

Recommended Approval:



Walter J. Slive
City Manager

RESOLUTION NO.

Adopted by The Sacramento City Council on date of

October 15, 1980

A RESOLUTION OF INTENT TO DISESTABLISH THE
OLD SACRAMENTO BUSINESS IMPROVEMENT AREA
CREATED BY CITY ORDINANCE NO. 4399 ADOPTED
AUGUST 5, 1980.

Be it resolved by the Council of the City of Sacramento:

The Council of the City of Sacramento hereby declares its intention to disestablish the Old Sacramento Business Improvement Area established by City Ordinance No. 4399 adopted August 5, 1980. The Council hereby sets a hearing date of November 25, 1980 at 7:30 p.m. to be held in the Council Chamber, Second floor, 915 - I Street, Sacramento, California.

MAYOR

ATTEST:

CITY CLERK



CITY OF SACRAMENTO

EXHIBIT II

DEPARTMENT OF LAW

812 TENTH ST
SUITE 201

SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

September 2, 1980

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

Joseph B. DiGiorgio, M.D.
Mustard Seed Cafe
1207 Front Street
Sacramento, CA 95814

Dear Dr. DiGiorgio:

This is in reply to your letter of August 13, 1980, in which you asked three questions concerning the Old Sacramento Business Improvement Area. Your questions and my answers are as follows:

QUESTION NO. 1

Is it correct that state law requires that for the establishment, modification or disestablishment of BIA, those businesses that generate the majority of the revenue collected will constitute the majority of businesses? In essence this is the one dollar per vote issue.

ANSWER TO QUESTION NO. 1

It is correct that in the establishment of the business improvement area, the formation procedure shall terminate if a portest is made by businesses in the proposed area which will pay a majority of the charges proposed to be imposed. (Streets and Highways Code Section 36523)

However, your statement is not correct, in my opinion, with respect to disestablishment of business improvement areas. Streets and Highways Code Section 36580 authorizes the City Council to disestablish an area by ordinance after a hearing. There is no requirement that disestablishment of the area take place if it is requested by businesses paying a majority of the charges. In my opinion, the City Council can determine the procedure to be followed for disestablishment. The Council has determined the procedure to be followed in City Code Section 23.731. This procedure calls for disestablishment if a majority of the businesses in the area request it. Although it is not clear under State law, I think the procedure for modification of a business improvement area is the same as for the establishment of the area. The State law in Streets and Highways Code Section 36527 and 36528, appears to treat the establishment and modification of an area similarly.

Joseph B. DiGiorgio, M.D.
Page Two
September 2, 1980

QUESTION NO. 2

Is it correct that state law gives the city council veto power over the expenditure of any BIA funds?

ANSWER TO QUESTION NO. 2

The State law gives the City Council "sole discretion" regarding the expenditure of revenues received from the business improvement area (Streets and Highways Code Section 36503). The State law also authorizes the Council to designate advisory boards to make recommendations as to the expenditure of such funds. Membership on these advisory boards may be limited to persons paying charges in the business improvement area. The final decision on the budget and expenditure of funds rests with the City Council.

QUESTION NO. 3

The resolution passed by the city council on August 5, 1980 in section 3 states four proposed authorized uses to which the proposed revenue shall be used. Although I understand that the City can not use the BIA funds for just any use that they might wish, are there any uses or circumstances that the city could use these funds for that lie outside the scope of the four proposed authorized uses, for example, parking? If so, please elaborate on what such uses might be allowable and under what circumstances or limitations.

ANSWER TO QUESTION NO. 3

City Code Section 23.727 authorizes the expenditure of revenue from the business improvement area for the following purposes:

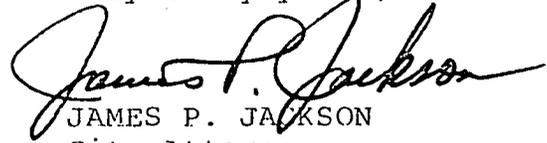
- (a) The general promotion of business activities in the Area.
- (b) Promotion of public events which are to take place on or in public places in the Area.
- (c) Decoration of any public place in the Area.
- (d) Furnishing of music in any public place in the Area.

These authorized uses are the same as those specified under State Law. The State law also authorizes expenditure for parking facilities. However, funds may not be spent in the Old Sacramento Business Improvement Area for parking facilities because such purpose is not included in the City Ordinance. Funds can only be spent for the purposes specified in City Code Section 23.727.

Joseph B. DiGiorgio, M.D.
Page Three
September 2, 1980

If you have any additional questions, please let me know.

Very truly yours,


JAMES P. JACKSON
City Attorney

JPJ:KMF

cc: Maynard Nelson
Old Sacramento Citizens and Merchants Association
Mayor Phillip Isenberg
Jack Crist, Finance
Mike Medema, Revenue & Collections
Walter Slipe, City Manager

RECEIVED
Department of Finance

SEP 2 1980

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OCT 15 1980

MICHAEL L. MEDEMA
REVENUES AND COLLECTIONS OFFICER

By the City Council
Clerk of the City Clerk

*Cont to
10-28-80*

OCT 21 1980

October 15, 1980

City Council
Sacramento, California

Honorable Members in Session

SUBJECT: Petition to Disestablish Old Sacramento Business Improvement Area

SUMMARY

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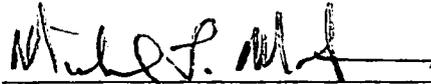
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RECOMMENDATION

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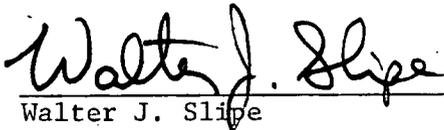
1. Adopt a resolution of intent to disestablish the Old Sacramento Business Improvement Area established by City Ordinance No. 4399.
2. Instruct staff to defer preparation of the reports related to that Area pending the resolution of the disestablishment issue.

Respectfully submitted,



Michael L. Medema
Revenues & Collections Officer

Recommended Approval:



Walter J. Slive
City Manager

RESOLUTION NO. 80-719

Adopted by The Sacramento City Council on date of

October 15, 1980

A RESOLUTION OF INTENT TO DISESTABLISH THE
OLD SACRAMENTO BUSINESS IMPROVEMENT AREA
CREATED BY CITY ORDINANCE NO. 4399 ADOPTED
AUGUST 5, 1980.

Be it resolved by the Council of the City of Sacramento:

The Council of the City of Sacramento hereby
declares its intention to disestablish the
Old Sacramento Business Improvement Area
established by City Ordinance No. 4399 adopted
August 5, 1980. The Council hereby sets a
hearing date of November 25, 1980 at 7:30 p.m.
to be held in the Council Chamber, Second
floor, 915 - I Street, Sacramento, California.

MAYOR

ATTEST:

CITY CLERK

APPROVED
BY THE CITY COUNCIL

OCT 20 1980

OFFICE OF THE
CITY CLERK