

CITY OF SACRAMENTO



CITY MANAGER'S OFFICE
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February 26, 1981

City Council
City Hall
Sacramento, California 95814

RE: OLD SACRAMENTO BUSINESS IMPROVEMENT AREA ORDINANCE

Honorable Members in Session:

SUMMARY

On November 25, 1980, the City Council asked that certain amendments be prepared to the Old Sacramento Business Improvement Area Ordinance. That attached draft ordinance contains the proposed amendments. Since there is no present effort to form a new business improvement district in Old Sacramento, this ordinance is not presented for adoption at this time. It is merely submitted to comply with the Council's request and to have a more acceptable ordinance available in the event of future interest in a business improvement area.

BACKGROUND INFORMATION

The attached ordinance complies with the City Council's request of November 25, 1980. The new sections in the ordinance are indicated with a margin notation. The proposed amendments are also summarized in the attached pages. We have consulted with City staff and representatives of the Old Sacramento business community in the preparation of this ordinance. Members of the Old Sacramento business community may wish to speak at the Council meeting on March 3, 1981. Since there is no effort at the present time to form a new business improvement district, this ordinance is merely presented for Council information.

RECOMMENDATION

It is recommended that the Council hear citizen comments concerning the attached ordinance. The ordinance can then be placed on file and will be available for use in the event of future interest in a business improvement area in Old Sacramento.

RECOMMENDATION APPROVED:

Butte Niemi for:
CITY MANAGER
JPJ : KMF
ATTACHMENTS

Very truly yours,
James P. Jackson
JAMES P. JACKSON
City Attorney

APPROVED ORD.
BY THE CITY COUNCIL
Tabled
MAR -3 1981

OFFICE OF THE
CITY CLERK

SUMMARY OF PROPOSED AMENDMENT TO OLD SACRAMENTO BUSINESS
IMPROVEMENT AREA ORDINANCE

BACKGROUND:

The Old Sacramento Business Improvement Area (OSBIA) was established in August 1980 under Sec. 23.725 et seq. of the City Code. In October 1980, a majority of the businesses in the OSBIA filed a petition to disestablish the district and on November 25, 1980, the City Council voted to disestablish the OSBIA.

At the November 25, 1980 hearing, several business persons indicated their continued support for an OSBIA; the Council therefore directed the City Attorney to revise the OSBIA ordinance (1) to improve the method of determining the extent of affected business' support/opposition to the existence of an OSBIA, and (2) to clarify how OSBIA charges are imposed on multi-licensed businesses and businesses conducted both within and outside the district.

Attached are the current OSBIA ordinance and a draft revision of that ordinance.

DIFFERENCES BETWEEN CURRENT AND DRAFT ORDINANCES:

1. Clarification of How Charges Imposed

State law requires the Council to make a reasonable classification of businesses in the district for purposes of assessing charges. Consideration must be given to the benefit received by certain types of businesses.

Present Section 23.729. Each business with more than one certificate for its operations (for example, a restaurant with a dance floor) is assessed an OSBIA charge for each certificate. No provision is made for the calculation of OSBIA charges payable by businesses conducted both within and outside the district.

Draft Section 23.729. The OSBIA charge assessed against a multi-certificated business will be based on only one certificate. A business conducted both within and outside the district will pay an OSBIA charge based only on business activities conducted within the area.

2. District Establishment Procedure

State law requires the Council to (1) pass a resolution of intention to establish the district and set a hearing, (2) publish the resolution in a newspaper, (3) mail the resolution to each business

in the proposed district, and (4) conduct a hearing on the issue of the formation of the district. If businesses in the proposed district which will pay a majority of the charges protest (a "dollar vote protest"), all proceedings to establish the district must cease. If a dollar vote protest is not made, the Council retains discretion on the question of whether to adopt an ordinance to form the district.

The resolution precedent to the August 1980 OSBIA formation incorporated only the State mandated pre-establishment procedures.

Proposed resolution. In addition to the State mandated pre-establishment procedures, it is proposed that the Council incorporate into the resolution the procedure embodied in the draft Sections 23.733 - .738 for ascertaining the support or opposition of businesses to the proposed creation of the district. (Draft Sections 23.733 - .738 are discussed in the next section of this memorandum.)

3. Modification and Disestablishment Procedures

The State mandated procedures for modification and disestablishment of a business improvement district closely parallel the procedure required prior to the creation of the district. The Council must pass a resolution, publish and mail the resolution, and conduct a hearing. If a majority dollar vote protest against the change proposed in a resolution is received by the Council, all proceedings on the proposed change must terminate. Absent such protest, the Council may (or may not) adopt an ordinance enacting the change proposed in a resolution.

Present Section 23.731. Only one section in the present OSBIA ordinance outlines the procedure for modifying or disestablishing the district. The inadequacy and ambiguity of this section is most succinctly explained by a point-by-point comparison with the procedures recommended in the draft ordinance.

A. Resolution of intention. Under both the present and draft ordinances, the Council may initiate and pass a resolution; additionally, the Council must pass a resolution if requested to do so by petition initiated by a majority of the businesses within the district. The draft clarifies ambiguity in present Section 23.731 regarding what constitutes a "majority" of businesses and what constitutes a valid petition which must be certified by the City Clerk and presented to the Council.

B. Written Arguments. The present ordinance makes no provision for written arguments. Under draft Section 23.733, the Council may, after the passage of a resolution, direct the City Clerk to solicit, collect, and mail to affected businesses written arguments for or against the charges proposed in the resolution. Arguments would be mailed in a packet also containing a copy of the resolution and a protest form.

C. Protest. Under the present ordinance, if a numerical majority of OSBIA businesses sign a petition requesting a disestablishment resolution, the Council must pass the requested resolution and, absent receipt of a second petition signed by a numerical majority of businesses opposing disestablishment, the Council must pass a disestablishment ordinance.

This procedure is not required by State law and can create an inequitable result. For example, assume the district has 100 businesses. If 51 sign a petition requesting a disestablishment resolution, a resolution must be passed. If then 20 of those 51 change their minds and subsequently sign a second petition, many fewer than a majority of the businesses would continue to favor disestablishment. However, the Council would nonetheless be forced to disestablish unless the second petition had 51 or more signatures.

Under the draft ordinance, all resolutions to modify or disestablish the district and a protest form will be mailed to all affected businesses. If a business opposes the change proposed in the resolution, it must return the protest form to the City Clerk. If a business desires to retract its protest, it may do so in writing submitted to the City Clerk anytime prior to 4:00 P.M. of the scheduled hearing date.

At the time of the hearing, the City Clerk will report to the Council whether a majority dollar vote protest has been received. If the Council rules that such protest has been received, all proceedings on the proposed change must terminate. However, if the Council rules that a dollar vote protest has not been received, the Council retains discretion to modify or disestablish the district.

In summary, the draft procedure attempts to give the Council at the outset of any hearing for modification or disestablishment a clear idea of the magnitude of protest against the proposed change. Furthermore, the draft removes Council discretion only if a majority dollar vote protest has been received - as required by State law.

4. Miscellaneous revisions

A. Nothing in the current ordinance precludes inactive businesses or businesses which have not paid their OSBIA charge or the City

business license tax from participating in the petition-resolution or protest process. The draft clarifies that only those active businesses which have paid their license tax and OSBIA charge may participate in the process for modifying or disestablishing the district.

B. Unlike the current ordinance, the draft allows the City to recover costs incurred in the administration of the OSBIA ordinance.

Article VIII - Old Sacramento Business Improvement Area

Sec. 23.725. Authority.

This article is adopted pursuant to the "Parking and Business Improvement Area Law of 1979", being section 36500 et seq. of the California Streets and Highways Code, and Resolution of Intention, adopted by the city council on _____ and titled "A Resolution of the City Council of the City of Sacramento, California, Declaring its Intention to Establish a Business Improvement Area in the Old Sacramento Area, to Provide for the Levying of Charges on Specified Businesses Conducted Within Such Area, Classifying Various Businesses for Such Purposes, Describing the Boundaries of the Proposed Area, the Authorized Uses to Which the Proposed Revenue Shall be Put, the Rate of Such Charges, the Procedure for Modifying, Enlarging and Disestablishing the Area, Fixing the Time and Place of a Hearing to be Held by the City Council to Consider the Establishment of Such An Area, Directing the Giving of Notice of Such Hearing, and Directing a Procedure to Ascertain the Support for the Establishment of the Area Prior to Such Hearing." Such resolution was published and mailed as provided by law, and hearings thereon were held by the city council at its regular meeting on _____, at which time all persons desiring to be heard, and all objections made or filed, were fully heard. The city council duly concluded the hearing on _____, and determined that protests objecting to the formation of the area have not been made by businesses which will pay a majority of the charges imposed by the District and that such protests are over-ruled and denied. The city council hereby finds that the businesses in the improvement area, in the opinion of the city council, will be benefited by the expenditure of the funds raised by the charged proposed to be levied.

Sec. 23.726. Area Established--Description.

There is hereby established a business improvement area which shall be known as the "Old Sacramento Business Improvement Area of the City of Sacramento," herein referred to as the "area" for brevity and convenience. The description of the area is as follows:

Beginning at the intersection of the westerly city limits of the City of Sacramento and the center line of the "I" Street Bridge; thence easterly along the center line of the "I" Street Bridge and Viaduct to its intersection with the continuation of the easterly line of Third Street; thence southerly along said

easterly line of Third Street to the point of intersection with the northerly line of Capitol Mall; thence westerly along said northerly line of Capitol Mall to the point of intersection with the westerly city limits of the City of Sacramento; thence northerly along said westerly city limits to the point of beginning.

The businesses located in the area shall be subject to any future amendments to the "Parking and Business Improvement Area Law of 1979" (commencing with section 36500 of the Streets and Highway Code).

Sec. 23.727. Authorized Uses.

The authorized uses to which the additional revenue shall be put are as follows:

- (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.

Sec. 23.728. Levy of Charge in Addition to Business License Tax.

There is hereby imposed a charge for the purposes authorized in Sec. 23.727, which charge is in addition to the ordinary business license tax as it is imposed upon businesses conducting their activities within the area by chapter 23 of the Sacramento City Code. Such additional charge is imposed at the rates set forth in Section 23.729 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 chapter 23 of the Sacramento City Code.

Sec. 23.729. Classification of Businesses and Charged Imposed.

The businesses conducted in the area are classified as follows so as to promote the equitable imposition of the additional charge provided hereunder in relation to the relative benefits to be derived. The charge which shall be due is in addition to the general business license tax imposed on each business within the area and shall be the percentage shown below in Column A applied to the amount of general business license tax payable each year under chapter 23 of the Sacramento City Code for that type of business.

NEW

If a business conducted in the area holds more than one Chapter 23 certificate for its operations within the area, the charge shall be the percentage shown in Column A applied to the highest amount of business tax payable under a single certificate for operators within the area.

NEW

If a business is conducted both within and outside the area, the charge imposed shall be the percentage shown in Column A applied to the amount of business tax attributable to business activities within the area.

<u>CLASSIFICATION</u>	<u>COLUMN "A"</u>	<u>INCLUDES</u>
Professional and General Offices	100%	Auction houses, pawn-brokers, secondhand dealers
	100%	Newspapers, periodicals, radio or television stations
	100%	Transportation of members of public
	300%	Vending machines
	100%	Wholesale sales and manufacturing
	300%	Rental of commercial, industrial and agricultural real property
	25%	Collection agencies
	100%	Contractors
	25%	Credit agencies, money lenders
	200%	Hotels, motels
	100%	Laundry, cleaning and dyeing, agent, collector, linen supply
	25%	Professions
	25%	Real estate; insurance stock brokers
	200%	Rental of residential real property

<u>CLASSIFICATIONS</u>	<u>COLUMN "A"</u>	<u>INCLUDES</u>
	25%	Services, semi-professions, occupations
	100%	Solicitors, accepting payment in advance-- master solicitor's license, Class I
	100%	Solicitors, not accepting payment in advance-- master solicitor's license, Class II
	100%	Taxicabs and limousines
	100%	Theaters, legitimate or motion picture
	100%	Trucking; delivery by vehicle
Eating and Drinking Facilities	200%	Restaurants, caterers
	300%	Dances, public; dances taxi
	300%	Card rooms
Retail Businesses	300%	Groceries, meat and fish markets
	300%	Retail sales
	300%	Carnivals or fairs
	300%	Christmas trees
	300%	Auto swap meets
	300%	Itinerant vendors
	300%	Poolrooms or billiard
	300%	Rummage or antique sale occasional
	100%	Dealer in antiques or collectible items

Sec. 23.730. Exemption; Voluntary Contribution.

Any business, person or institution located in the area, which is exempt from the payment of the ordinary business license 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 Article.

MODIFICATION OR DISESTABLISHMENT OF THE AREA

Sec. 23.731. Resolution of Intention Initiated by the City Council.

The city council, by ordinance, may modify the provisions of this article and may disestablish the area after adopting a resolution of intention to such effect. Such resolution shall describe the proposed change or changes, or indicate that it is proposed to disestablish the area, and shall state the time and place of hearing to be held by the city council to consider the proposed action.

Sec. 23.732. Resolution of Intent Initiated by Petition.

(a) Upon receipt of a petition, requesting the adoption of a resolution to modify or disestablish the area, which has been certified by the city clerk, the city council shall adopt such resolution at its next scheduled meeting.

(b) All petitions under this article shall be filed with the city clerk. Not more than fourteen (14) days after the filing of a petition, the city clerk shall certify or reject a filed petition and forward any certified petition to the city council.

(c) The city clerk shall certify only those petitions which:

1. Contain signatures of the authorized representatives of the active businesses which pay or will pay a majority of the charges imposed by the District.
2. Are filed within six (6) weeks of the date on which the first signature on the petition was affixed.
3. Describe with reasonable clarity the proposed change or changes, or disestablishment of the area.

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(d) "Active business" as used in this article means a business which is open to the public and holds a valid city business license.

Sec. 23.733. Written Arguments.

At the time a resolution is adopted, the city council may direct the city clerk to solicit, collect, and mail to affected businesses written arguments for or against the change proposed in the resolution.

(a) If so directed by the city council, the city clerk shall publish at the same time and in the same manner specified in Section 23.734, a request for the submission of arguments for and against the charge proposed in the resolution.

(b) Any active business within the area or proposed area may file with the city clerk a written argument for or against the proposed modification or disestablishment before a date specified by the city clerk. No argument shall exceed 300 words or be accepted unless accompanied by the name or names of the businesses submitting it. No more than three (3) names shall appear with any argument. If any argument is signed by more than three businesses, only the names of the first three (3) shall be printed.

NEW
(c) If more than one argument for or more than one argument against any proposed change is submitted to the city clerk within the prescribed time, the city clerk shall select for distribution one of the arguments in favor and one of the arguments against the measure. In selecting arguments, the city clerk shall give preference to arguments signed by the greatest number of businesses.

(d) If an argument is submitted against the proposed change and an argument in favor of the proposed change has been filed, the city clerk shall immediately send a copy of the selected opposing argument to the author(s) of the selected supporting argument. The authors of the selected supporting argument may prepare and submit a rebuttal not exceeding 250 words. The clerk shall immediately send copies of the selected supporting argument to the author(s) of the selected opposing argument, who may prepare and submit a rebuttal not exceeding 250 words. The rebuttals shall be filed by a date specified by the city clerk.

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(e) The city clerk shall print one argument for and one argument against the proposed change. If applicable, the city clerk shall also print a rebuttal immediately after the direct argument which it seeks to rebut.

(f) On the heading of the first page of the printed arguments, the city clerk shall state:

"These arguments are the opinions of the authors who are solely responsible for their content. They are not necessarily the opinions of the City of Sacramento, its officers, agents or employees."

Arguments and rebuttals shall be titled by the city clerk; words used in the title shall not be counted when determining the length of any argument.

(g) A ballot argument or a rebuttal argument which includes in its text the name of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of such person. The consent of a person, other than an individual shall be signed by an officer or other duly authorized representative. "Person" as used in this subsection means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

NEW
Sec. 23.734. Publication of Resolution.

After a resolution of intention, the city clerk shall publish at least once in an official newspaper in the City of Sacramento the resolution. Such publication shall occur at least fourteen (14) days prior to the scheduled hearing date.

Sec. 23.735. Solicitation of Written Protest.

(a) Wherever the city council adopts a resolution of intention under this Article, the city clerk shall prepare a form entitled "Registration of Protest." The form shall briefly summarize the change proposed in the resolution and request the following information:

1. Name of business;
2. Address of business;
3. Business license tax certificate number(s);
4. Name of individual completing form;

5. Relationship between individual and business;
6. Other information requested by the city council.

(b) The form shall contain the following notice:

Pursuant to Streets and Highways §36523, the city council must rule on protests against the change proposed in a resolution of intention at the time of the hearing to consider the proposed action.

If the council rules that a protest has been made by the active businesses which pay or will pay a majority of the charges imposed by the district, state law requires that all proceedings must terminate.

If the council rules that such protest has not been made, the city council has the power to either enact, or refuse to enact, an ordinance adopting the changes proposed in the resolution, or to postpone its decision to a future date.

If you wish to protest against the change in the Old Sacramento Business Improvement Area proposed in the enclosed resolution, you must complete this form (or submit other writing containing the information requested on the form) and return it to the city clerk no later than 4:00 P.M. of the date of the scheduled hearing.

NEW

Sec. 23.736. Mailing of Resolution, Arguments and Registration of Protest Form.

Not less than fourteen (14) days prior to the scheduled hearing date, the city clerk shall mail the following to each business in the area or if it is proposed to enlarge the boundaries of the area, to each business in the area as it is proposed to be enlarged:

- (a) A copy of the Resolution of Intention;
- (b) A copy of arguments, if applicable (Sec. 23.733);
- (c) A copy of the rebuttals, if applicable (Sec. 23.733);
- (d) A registration of protest form (Sec. 23.735);
- (e) An envelope for the return of the registration of protest form.

Sec. 23.737 Tabulation of Written Protest.

Written protest forms (Section 23.735) received by the city clerk shall be public documents. The city clerk shall certify, and tabulate and report to the city council at the hearing whether written protest has been received by the active businesses which pay or will pay a majority of the charges imposed by the district.

Sec. 23.738. Hearing; Effect of Majority Protest.

(a) At the hearing, the city council shall receive evidence for and against the proposed action and shall rule upon all protests. The council's determination in this regard shall be final.

(b) Proceedings shall terminate if the city council rules that written protest, indicated on the Sec. 23.735 protest form or by other writing, has been received from active businesses in the area, or in the area as it is proposed to be enlarged, which pay or will pay a majority of the charges imposed by the district. If the city council rules that such protest has not been received, the city council may enact, refuse to enact an ordinance adopting the change proposed in the resolution of intention or may continue the hearing to a future date.

Sec. 23.739. Administration.

The council may provide for the administration of the area's activities by entering into a contract with an entity that in the opinion of the city council will have the capability of representing the interests of the businesses in the area, whose general objectives will be consistent with the purposes of this article, 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 charges hereunder shall be used within the scope of said authorized purposes.

Sec. 23.740. Payment of Charge - Effective Date.

The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business license tax under chapter 23 of the city code, commencing _____ . A special fund is hereby created, known as the "Old Sacramento Business Improvement Area Fund." The charges imposed by this article shall be deposited in such fund. The city costs incurred in the administration of this article shall be withdrawn from such fund.

Sec. 23.741. Applicability of Relevant General
Business License Provisions.

The provisions of chapter 23 of the city code, insofar as they are relevant to the provisions hereunder, shall be made applicable to all businesses subject to said charges. No business license shall be issued pursuant to the said chapter 23 of the city code unless the charges pursuant hereto are paid, together with the applicable general business license tax.

Sec. 23.742 to 23,800. Reserved.

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BACKGROUND:

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B. Unlike the current ordinance, the draft allows the City to recover costs incurred in the administration of the OSBIA ordinance.



February 26, 1981

James P. Jackson, City Attorney
City of Sacramento
812 10th Street, Suite 201
Sacramento, California 95814

Re: Old Sacramento Business Improvement Area

Dear Mr. Jackson:

This letter is in response to your memo of February 19, 1981, to Maynard Nelson, former president of our Association, regarding the above-referenced subject.

Our Board of Directors has reviewed the proposed ordinance revisions and recognizes that there has been a serious effort made by your staff to create a generally more acceptable structure.

As you are aware, it was, during 1980, the policy of the Association to support the creation and operation of a B.I.A. in Old Sacramento. In November, it became clear that a numerical majority of the businesses in our area held a contrary view. Since that time, the membership of our organization has more than doubled, with the increase being due, in major part, to participation by business persons who opposed the B.I.A.

Nothing has been brought to the attention of this Board to indicate that either a numerical or "dollar" majority favors the establishment of a B.I.A. at this time. Accordingly, this Board voted today to oppose any attempt to establish such a district.

However, due to the short notice, we are unable to submit comments on the mechanics of the revised ordinance.



James P. Jackson, Esq.
Page Two
February 26, 1981

Both your memorandum, and the cover letter from Ms. Magana, the City Clerk, indicate that this is being sent to the Council as a "model ordinance" without any present intent that it become operative. If that is the Council's position also, we would suggest removing our area's name and description from it so that any area choosing to use it could do so.

In the alternative, if the ordinance is to remain directed to our area only, we would ask that all action on it be tabled until such time as there is an expression from a majority of the businesses concerned indicating a desire for such a district.

Thank you for the opportunity to comment.

Sincerely,



Susan Polley, President
Old Sacramento Citizens
and Merchants Association

sp

cc Lorraine Magana, City Clerk
Councilman John Roberts