

## CITY COUNCIL

For City Clerk's Use:

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APPROVED

☐

DENIED

Reso No. \_\_\_\_\_

File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.: 9**

**Date: November 2, 2011**

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

**FROM:** Joyce Masterson, Assistant to the City Manager  
Corrine Neuffer, Deputy City Attorney

**SUBJECT:** Disestablishment of the Downtown Business Improvement District (BID)

**RECOMMENDATION:**

It is requested that Council adopt Ordinance No. 2011-16 to disestablish the Downtown Business Improvement District (BID) and rescind Escondido Municipal Code Chapter 16C.

**FISCAL ANALYSIS:**

No direct fiscal impact to the City budget. The City will have an indirect fiscal benefit since staff will no longer collect, disburse, or enforce the program assessment.

**CORRELATION TO THE CITY COUNCIL ACTION PLAN:**

This item relates to the City Council 2011-2012 Action Plan regarding Economic Development.

**PREVIOUS ACTION:**

Council initially adopted Ordinance No. 89-28 on June 14, 1989, establishing a Downtown Business Improvement (Assessment) District. On September 14, 2011, Council directed staff to begin the necessary legal requirements to disestablish the BID. On October 5, Council adopted Resolution 2011-129 setting November 2, 2011, at 4:30 p.m. as the public hearing date to disestablish the Downtown Business Improvement District.

**BACKGROUND:**

California Streets and Highways Code Section 36550 authorizes the City Council to disestablish a parking and business improvement area by ordinance after adopting a resolution of intention prior to conducting a public hearing on the ordinance. Under State law, upon the disestablishment of the area, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the businesses located and operating within the area, applying the same method and basis that was used to calculate the levied assessments. However, there is no requirement to sell BID assets.

Refund of Sale of BID Assets

The Downtown Business Association (DBA) served as the BID Administrator for over twenty-two years. During that time, purchases were made using both BID and DBA funds. The DBA has not identified any assets that were purchased solely with BID revenues and has not sold any assets that have been identified as purchased solely with BID revenues. In light of the foregoing, as well as the difficulty in analyzing twenty years' worth of purchases to determine which were funded by the DBA versus the BID, staff recommends that no assets be liquidated.

Disposition of Remaining Revenues:

The City of Escondido has been collecting BID fees for fiscal year 2011-12 since July 1, 2011. The following is a monthly breakdown of the number of businesses that have paid their BID fees and the amounts:

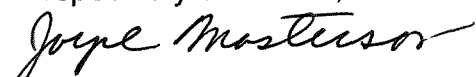
Month	Number of Businesses	Amount
July	54	\$11,292.50
August	79	\$13,492.25
September	52	\$7,399
October (as of October 20)	43	\$6,042 (\$250 was penalty fees)

None of the funds collected since July has been disbursed to the Downtown Business Association or refunded. Since the DBA was still the Administrator of BID revenues until August 31, 2011, staff recommends that the funds collected during July and August be passed on to the DBA. All funds collected since September 1, 2011 will be refunded to the owners of the businesses located and operating within the area, applying the same method and basis that was used to calculate the levied assessments.

It should be noted that as of September 14, 2011, seven businesses were past due on their BID fees. The City Attorney's Office has been in contact with these businesses to bring their accounts current.

By adopting Ordinance No. 2011-16 the City Council will disestablish the Downtown Business Improvement District.

Respectfully submitted,



Joyce Masterson  
Assistant to the City Manager



Corrine Neuffer  
Deputy City Attorney

ORDINANCE NO. 2011-16

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
TO DISESTABLISH THE DOWNTOWN  
BUSINESS IMPROVEMENT DISTRICT AND  
RESCIND ESCONDIDO MUNICIPAL CODE  
CHAPTER 16C

WHEREAS, City Council established a Downtown Business Improvement District ("BID") pursuant to the California Streets and Highways Code Section 36500 *et seq.* by Ordinance No. 89-28, dated June 14, 1989; as revised by Ordinance No. 91-37, dated October 2, 1991; and

WHEREAS, Streets and Highways Code Section 36550 authorizes the City Council to disestablish a parking and business improvement area by ordinance after adopting a resolution of intention prior to conducting a public hearing on the ordinance; and

WHEREAS, the services provided and funded through the BID are no longer desired; and

WHEREAS, on October 5, 2011, the City Council adopted a Resolution of Intention to Disestablish the BID pursuant to Streets and Highways Code Section 36550 and to set a public hearing on the disestablishment; and

WHEREAS, City staff complied with the noticing and publishing requirements of Streets and Highways Code Section 36523 by publishing the Resolution of Intention to Disestablish the BID with the North County Times seven days prior to the public hearing

on November 2, 2011, and sending a copy of the resolution to each business in the BID within seven days of the City Council's adoption of the resolution; and

WHEREAS, Escondido Municipal Code Chapter 16C establishing and pertaining to the BID will no longer be effective once the BID is disestablished and should therefore be rescinded and reserved; and

WHEREAS, a duly noticed public hearing was held by the City Council on November 2, 2011 at 4:30 p.m. regarding the disestablishment of the BID.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. The recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2. That upon consideration of the staff report and all public testimony presented at the hearing held, this City Council desires at this time and deems it to be in the best public interest to disestablish the BID pursuant to the provisions of the Streets and Highways Code Section 36550.

SECTION 3. Any remaining revenues derived from the levy of assessments will be refunded to the owners of the businesses, applying the same method and basis that was used to calculate the levied assessments.

SECTION 4. That Escondido Municipal Code Chapter 16C entitled "Escondido Downtown Business Improvement District" is rescinded and reserved.

SECTION 5. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of

competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and the disestablishment of the BID and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.