

## Middleton, Samuel

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**From:** Ted Tapfer <ted@tapferrealty.com>  
**Sent:** Tuesday, November 15, 2022 9:27 AM  
**To:** eComment  
**Subject:** Agenda Item #26/ SAVE THE BID

Dear Mayor, City Council and Staff,

Please save the BID. I am part of the ownership of the First National Bank Building (106 West 4<sup>th</sup> Street).

The partnership and support we have received from both Downtown Inc. and SABC Inc. has been incredible... the DTI Newsletter, volunteer at events like Savor Santa Ana, the downtown breakfast, etc. etc.. Both Ryan Smolar and Madeleine Spencer, the BID consultants, have been indispensable. The BID makes Downtown Santa Ana safe and fun, while at the same time promoting all of Santa Ana to the rest of Orange County, as well as all of California.

Ending the BID would be devastating... the Newsletter, Artwalk, the Board meetings, Savor Santa Ana, Boca del Oro would be no more. I fear crime, vandalism and graffiti will all increase because of the lack of programming, advocacy and oversight by the BID.

Ending the BID will cause irreparable damage to Downtown Santa Ana.

Please save the Downtown BID.

**Ted Tapfer**



c: (949) 244-9040  
[ted@tapferrealty.com](mailto:ted@tapferrealty.com)



November 14, 2022

ATTN: City of Santa Ana publicly elected Mayor and City Council Members

Dear City of Santa Ana Mayor and City Council members,

My name is Gene Jimenez and my family has been in Santa Ana for over 100 years. My great grandparents settled the Artesia/Pilar neighborhood in 1909. My godfather Rudy Gallegos designed and built the historic library as well as Eddie West Field among other numerous iconic buildings and structures in Santa Ana. I also spent summers with Hector Godinez's family annually.

I write to you as a Downtown Santa Ana business owner and a resident artist, one of three remaining in the Santora Building, home of the original established Artist Village. Truth be told, without the artist establishing an art movement in downtown in 1996, we would not be having this conversation. Yet, here we are in a flourishing and creative community that needs leadership, organization, and action. Three distinct qualities that best describe the organizations that are the current stewards of the BID, the Santa Ana Business Council (SABC) and DOWNTOWN, Inc. (DTSA).

Please let this letter serve the support of continuing, and reinforcement of the BID. SABC, and DTSA are two organizations that over the past decade have developed, fought for and continue a daily striving for the betterment of Downtown Santa Ana's businesses and the owners and families of those entities. Families that put you in office to make decisions that are right for them.

SABC and DTSA have operated in nothing but good faith with forwarding events and actions for downtown businesses. Even to their own detriment. Councilman Johnathan Hernandez personally directed the privately held organizations of SABC and DTSA to officially merge with a third party, an unknown organization, and held out a large sum of city budget in the form of the BID fund as collateral for this official action. An action that is not in the best interest of either SABC or DTSA as private organizations. However, both SABC and DTSA have begun this irrevocable action so as to act in a manner that can financially and operationally benefit the businesses and the families of downtown Santa Ana, irregardless of their own organizations fate and much to the discomfort of each respective director for SABC and DTSA. In essence, under councilman's Hernandez's directive, both directors are willing to give up their personal entities that have put Downtown Santa Ana business district and community at large on the map in a very positive light for years to come, in order for the new combined group to benefit from Councilman Hernandez promise of substantial city funding via the BID.

As a business owner in downtown Santa Ana, as a resident senior artist in the now widely recognized Downtown Santa Ana Artists Village, and as a family member of Santa Ana for the past century, I am demanding that you help Councilman Hernandez keep his promise that he stated in my presence, of upwards of \$1million+ dollars for the BID fund so that the entire Downtown and Santa Ana community as a whole can stop arguing with you, let those who have helped put Santa Ana permanently on the arts and culture map in California continue to do what they've done on a mere fraction of that budget, while also letting the community take pride in who they put in office.

Thank you for your time and service

Gene Jimenez  
Artist  
Downtown Santa Ana business owner  
DTSA Board Member

## Middleton, Samuel

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**From:** Ginette Sanchez <ginettesanchez@yahoo.com>  
**Sent:** Monday, November 14, 2022 3:18 PM  
**To:** eComment  
**Subject:** Hello Mayor Sarmiento, Council Members and City Manager:  
**Attachments:** DOCUMENT013.pdf; DOCUMENT012.pdf

Hello Mayor Sarmiento, Council Members and City Manager:

Reference: Support of Dissolving of BID Downtown request to have this document entered into your records for City Council meeting 11/15/2022

We are the Latino Merchant Group here of Calle 4 in Downtown. We are a group of hard working people, many of us come from different parts of the world to build our American Dream. We have built our business from the ground up with blood sweat and tears to provide for our families. The majority of merchants have been here for over 10,20,30 years. We are asking please for your listening ear to hear us on why we need your vote to CANCEL THE BID. Why did it take a massive construction here on 4th for people to realize they are paying into the BID? It is SAD that many businesses realized they are paying into the BID when we got together to fight for assistance after the construction started. The City of Santa Ana has failed and neglected to educate and inform merchants when they started to impose this extra useless tax on all merchants in the BID District.

The Brown Act requires public advance notice of meetings and that public is invited to attend and can speak. Why have we not been treated with respect when we attend this meetings? By putting on social media last minute is not proper notice. Not everyone is on Social media. We should have had a say on how we wanted our money to be spent. How are these board members being elected? Why 2 of this associations are taking almost all the money into the budget? Why were we never notified as business owners that OCTA gave these associations 400,000 dollars? And still to this day we do not know how that 400,000 was spent . Has anyone properly evaluated this events if they have really benefited us? Why do they keep paying with our money this events that do not benefit us at all. Where are the Latino events? If they have a list of all the businesses why don't they go to each one to ask for our opinions? They have events and closed down the street without our consentment. They say they gather signatures but no one is able to show proof they gathered those signatures. It just shows that these people do as they please and want without any merchants input. If we are paying we should have a right to know how our money is being spent. But at this point it is too late we do not trust anyone anymore, and canceling the BID will let our downtown heal. Money has been wasted and abused, and we are sick and tired of it. We are tired of this people taking advantage of us thinking we are naive, we will not longer sit quiet. BID represents Business Improvement District. Where are the Improvements? Downtown has become a ghost own as all of you are witnessing. Where are all the Latino businesses and Latino families? Where is the crowd that use to fill the downtown ?

The only fact about the BID that everyone is trying to forget and ignore is that even based on the grand jury verdict, it is unlawful and illegal. You can find that in the grand jury report, we will attach it to this email. After canceling PBID, that nobody knows what happened to those millions of dollars that disappeared, the City of Santa Ana got sued for the bridge of contract and at that time city council decided one more time to side with the same investor and instead of paying the lawsuit that was city responsibility to pay, charging innocent merchants for 3 years and hand the money to him. Unfortunately after even 3 years city not only made no attempt to reach out to merchants whether they want to continue to pay for this extra tax, but continued to charge the merchants for over 10 years now and continue to hand out our hard earned money to go to waist to this abuse. We would like to remind you in the United States the burden of proof is only on the shoulders of the government. So again it is your responsibility to provide 51% vote of people who want to pay for the BID not other way around . We hope as a new council members you decide to side with the people who elected you and stop this corrupt tax and stop this corruption!

Best regards ,

Latino Merchant group  
11/14/2022

Sent from my iPhone

# FRIEDMAN STROFFE & GERARD, P.C.

A LAW CORPORATION

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August 3, 2012

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## **VIA E-MAIL (mpulido@santa-ana.org) & U.S. Mail**

The Honorable Miguel Pulido  
Mayor and City Council  
20 Civic Center Plaza  
P.O. Box 1988, M31  
Santa Ana, CA 92701

RE: August 6, 2012 Counsel Agenda: Levying of Assessment for downtown  
Parking Business Improvement District

Dear Mayor Pulido:

Your August 6, 2012 Agenda has items in which you must give direction to staff regarding the Downtown Community Management District's ("CMD") assessment. You are faced with two options: The first is to submit the assessment to the County for collection as required by your Municipal Code, your downtown management plan, and your contract with Downtown Incorporated; and your second option is to begin action to dissolve the CMD based upon the completely false argument that the CMD was improperly formed. We write this day on behalf of Downtown Incorporated to encourage you to follow the law in this matter and to submit the assessment to the County for collection as required by your various documents and the City's contract with Downtown Incorporated.

## **DISCUSSION**

### **1. The Downtown Community Management District was Legally Established.**

The Grand Jury was simply wrong in its conclusions that question the legality of the establishment of the Community Management District ("CMD"). The City was on well established, sound legal footing in establishing the CMD and levying the assessments on December 15, 2008.

The Grand Jury was wrong in its assumption that the Government Code requirements for establishing an assessment district apply to the City of Santa Ana. As a charter city, the City of Santa Ana has independent authority to take action on matters of local concern.<sup>1</sup> It is recognized under California Law that the establishment of Assessment Districts are a matter of local concern over which a charter city can exercise its own independent authority.<sup>2</sup> A charter city's independent authority has not been undermined by the passage of Proposition 218 in 1998.<sup>3</sup>

The City is, however, required to follow the constitutional requirements established by Proposition 218, and it did so fully. The procedures utilized by the City in levying the assessment in a Downtown Community Management District were completely consistent with the dictates of Proposition 218. Despite the Grand Jury's questioning of the decision of the City to use of a formula for financially weighting the votes in the creation of the CMD and levying the assessment, that financial weighting requirement was established by Proposition 218 and is thus constitutionally mandated.<sup>4</sup> Likewise, as established above, the dictates of the Streets and Highways Code that set out the specific requirements for the establishment of Property and Business Improvement Districts<sup>5</sup> do not apply. Thus, the City was fully authorized to utilize 30% of property owners' petition for initiating assessment proceedings and establishing the Assessment District for 10 years as opposed to 5 years.

Further, the Grand Jury was legally incorrect in questioning the appropriateness of the City's voting its property and of the tabulation of the votes by the City Clerk. The constitutional provisions enacted under Proposition 218<sup>6</sup> require that all property owners within a proposed assessment district be provided with the opportunity to vote.<sup>7</sup> The Government Code Sections implementing Proposition 218's constitutional mandate also require that all record owners, which include government property owners, be provided a ballot for voting in assessment elections.<sup>8</sup> Thus, not only is it accepted practice that a city votes its property, but the constitution and the statute implementing Proposition 218 mandate it be given the opportunity to vote its property.

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<sup>1</sup> California Constitution, Section 5.

<sup>2</sup> See e.g. Streets and Highway's Code Section 36603.

<sup>3</sup> See e.g. *Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809 [the City of San Diego's establishment of an Assessment District upheld applying the statute of limitations unique only to charter cities].

<sup>4</sup> California Constitution Article XIII, Section 4, subdivision(e) "[T]he ballots shall be weighted according to the proportional financial obligation of the affected property" and subdivision (g) "[E]lectors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment"; *Golden Hill Neighborhood Association, Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416.)

<sup>5</sup> Streets and Highways Code Sections 36600 *et seq.*

<sup>6</sup> California Constitution Article 13D.

<sup>7</sup> California Constitution Article 13D Section 4(a).

<sup>8</sup> Government Code Section 53753(b).

Likewise, the City Clerk is the appropriate individual to tabulate the ballots. Government Code 53753(e)(1) requires that the ballots be tabulated by an "impartial person." The provisions of that section then go on to specifically identify the City Clerk as an appropriate impartial person for tabulating the ballots. In fact, it is the City Clerk's role uniformly throughout election procedures to tabulate such votes and to ensure that election procedures are followed. Thus, the Grand Jury demonstrates its lack of knowledge of this area of the law in its questioning of the appropriateness of the City Clerk in tabulating the votes for the Assessment District.

In conclusion, clearly the Downtown CMD was legally established under the weight of California law. The Grand Jury was incorrect in its conclusions questioning the legality of the formation of the CMD. There is absolutely no legal basis to challenge the legality of the formation of the Downtown CMD and speculative allegations to the contrary should be ignored hence forth.

**2. There are No Legal Grounds or Factual Reasons to Dissolve the CMD.**

The evidence presented, and arguments made, to the Council to date establish absolutely no legal grounds consistent with the City's CMD ordinance to dissolve the Downtown CMD. In fact, the evidence before the Council is overwhelmingly in support of a conclusion that the CMD and its management by Downtown Incorporated have been dramatically successful over the course of these last years.

The City's CMD Ordinance (Municipal Code Article XX, Section 13-212) addresses the issue of dissolution of the CMD. Yes, the Council is authorized to dissolve the CMD by resolution. Grounds for dissolution of the District are then set out in the very next sentence in the subdivision. The section states, "If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment." There are no allegations before the Council, much less any evidence, that support the conclusion members of the CMD or Downtown Incorporated misappropriated funds, violated the law or committed any malfeasance in the management of the CMD. Yes, there is wild speculation over ownership interests and benefit, but that is distinctly different than evidence or even allegations of misappropriation or malfeasance. Thus no grounds as identified in the City's CMD Ordinance exist for taking action to disestablish the CMD.

Moreover, the success of Downtown Incorporated in managing the CMD eloquently speaks for continuing the successful efforts funded by the CMD. Casual observation establishes that the downtown has come alive under Downtown Incorporated's management of district funding. In fact, the entire reputation of Santa Ana's downtown has improved markedly for not only being a safe and enjoyable place to visit during the day, but brings visitors to the downtown even in the evening hours. This fact is established by the myriad of written communications the Council has received not only

for this particular agenda item scheduled on August 6, 2012 but historically over the last year of controversy. The sales tax figures alone from the downtown give clear, unequivocal numerical confirmation of the success of the program. You have received Downtown Incorporated's annual report and we enclose a copy of correspondence from the State Board of Equalization showing the success of the efforts from 2009 to the present in solid sales tax figures.<sup>9</sup> Even in the depths of this depression, sales tax revenues have increased dramatically between 2009 and the present.

Downtown Incorporated has also been successful in its efforts to develop all aspects of cultural business in the downtown area. Downtown Incorporated has funded and participated with volunteer support in multi-cultural events throughout the downtown district. It has supported the Cinco de Mayo celebrations. It has supported Dia de los Muertos and Noches de Posada. It has supported the Quinceañera Expo and many other cultural events. It makes no distinction based upon race or color and in fact seeks to support and contribute to the establishment of a diverse, multicultural, and vibrant business community that serves all the ethnicities within Santa Ana. Allegations to the contrary are absolutely inconsistent with the facts and are irresponsible in the result of pitting one cultural group against another in this diverse community.

Finally, it would be inappropriate for the Council to take action to dissolve the CMD at this time due to the City's ongoing obligations in the CMD. The City's own Municipal Code mandates that the Council take no action that undermines existing contractual obligations entered into within the CMD.<sup>10</sup> As discussed more fully below, the City has an independent contractual obligation to Downtown Incorporated for its management services of the CMD funding and the CMD management plan. Dissolving the CMD at this time would remove the Council's funding source for meeting the City's obligations under the contract with Downtown Incorporated and would thus violate the City's Municipal Code.

For all of the above reasons, it would be inappropriate and poor policy to take action to dissolve the district at this time.

**3. The City is Contractually Obligated to Continue Funding the Management of the CMD Plan Through December 31, 2014.**

The City entered into a binding contract with Downtown Incorporated, the property owners' association established to manage the CMD, through December 31, 2014. This contractual obligation is established through a binding legal agreement wholly independent from the City's determination to establish the CMD and to assess

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<sup>9</sup> Downtown, Incorporated requested comprehensive sales tax figures from the Board, but the Board could not produce figures comprehensively for all business in the downtown and insisted upon Downtown Incorporated making a focused request. The request was then formulated as reflected in the correspondence to emphasize the various sectors of business within the downtown area.

<sup>10</sup> Santa Ana Municipal Code Article XX, Section 13-211(c).



properties within its boundaries. Dissolving of the CMD at this time, and/or refusing to direct the County to collect the assessments for each fiscal year during the pending agreement, would breach the contract that binds the City to the ongoing management of the District.

The obligations of the City to Downtown Incorporated are clear. The contract approved and entered into by the City on June 9, 2009, expressly provides that the contract will be in effect until December 31, 2014 and the City does not have the power to terminate the contract prior to its expiration absent a default by Downtown Incorporated.<sup>11</sup> The City is expressly obligated under the contract to continue the assessments and to have the County collect the assessments annually.<sup>12</sup> The contract provisions are unequivocal on this obligation. The contract, as signed by the City, states, "The CITY *shall* submit to the County of Orange each year an annual assessment roll for the DISTRICT and *shall* disburse the DISTRICT assessment revenues received from the County of Orange to the ASSOCIATION in accordance with Section 5.1 hereof." [*Emphasis added.*] The use of "shall" is a mandatory term under the law recognizing that there is no discretion on the part of the obligated party. The City must direct the County to collect the assessments or be in breach of the contract. Therefore, the City has a clear legal obligation to in fact proceed forward with directing the County to collect the assessments required under the CMD.<sup>13</sup>

**4. The Right Choice By the Council From a Risk Management Perspective is to Continue the CMD and the Funding of Programs Throughout the Pendency of the Contract with Downtown, Incorporated.**

The responsible choice by the City Council as the policy and oversight body of the City is to meet the City's obligations under the contract with Downtown Incorporated and continue the assessments within the CMD. Council members have a fiduciary obligation to the City as a whole to oversee the business of the City. From a purely risk management standpoint, the risk to the City is far greater both qualitatively and quantitatively in violating the City's contract with Downtown Incorporated as compared to dissolving the CMD.

There is no credible legal basis for the minority dissenters within the CMD to sue the City over the creation of the CMD or the levying of the assessment. As discussed above, the CMD was legally established. None of the questions raised by the Grand Jury or any of the minority dissenters have any basis in fact or law. Thus there is no qualitative risk to the City in choosing to continue with the CMD at this time.

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<sup>11</sup> Contract, Page 1, Section 1.2.

<sup>12</sup> Contract, Page 2, Section 4.1.

<sup>13</sup> Downtown, Incorporated was not involved in the actual formation of the CMD. The City took the action to form the CMD. The CMD is the funding source for downtown improvements, programs and events but they are managed by Downtown Incorporated.

Moreover, there is virtually no quantitative risk to the City for continuing with the CMD for the balance of the contract. First, any action which could be brought by the minority dissenters to dissolve the CMD or recover taxes would be barred by the applicable statute of limitations. The time in which a property owner could challenge the levying of the assessments ran 30 days after the levy of the assessment. (Municipal Code Article XX, Section 13-208; See also, *Barratt American, Inc. v. City of San Diego* (2004) 117 CA4th 809.) Therefore, not only would the risk of losing be virtually nonexistent, the expense of handling the litigation would be minimal. Such a case would be thrown out upon objections to the pleadings in the first stages of the case. As a result, the City would have virtually no financial risk in continuing the assessment under the CMD for the balance of the City's contract with Downtown Incorporated.

The opposite is true should the City choose to breach the terms of its contract with Downtown Incorporated. The contract between Downtown Incorporated and the City clearly and unequivocally sets forth the responsibilities the City in mandatory terms in section 4 of the contract. As quoted above, Section 5.1 of the contract then goes on to expressly obligate the City to pay Downtown, Incorporated annually, stating:

5.1. Commencing with fiscal year 2009-2010 and continuing through fiscal year 2013-2014, the CITY shall annually remit to the ASSOCIATION [Downtown, Incorporated] the DISTRICT assessment revenues collected by the County of Orange and paid to the CITY within 30 days of receipt of such revenues by the CITY from the County of Orange. [Emphasis added.]

Thus, the contractual obligations of the City are clear with respect to the Downtown Incorporated. The City must continue to perform under the contract through December 31, 2014. It must annually submit the assessment role to the County for billing with property tax assessments and remit the revenues gained from that assessment to Downtown Incorporated for use under the CMD plan. As a result, qualitatively the City is exposed to significant risk for not complying with the terms of the contract.

Likewise the City is exposed to significant risk quantitatively if it does not comply with the contract. The annual assessment is anywhere between \$800,000 to \$1 million dollars approximately. The breach of the duty to collect the assessment and forward it to Downtown Incorporated for the purposes of carrying out the plan creates at least that amount of exposure to the City. In addition, it is entirely possible there would be other damages related to the loss of existing investment from reliance upon the City's representations that it would honor its contractual obligations to Downtown Incorporated and to carry out the CMD plan.

As one can see, from a purely risk management policy standpoint, the responsible action for the City Council is to honor the existing agreement and to continue to perform under the contract at least through the balance of the term of the agreement. Otherwise, the City is exposed to significantly more risk than in refusing to disestablish the CMD.

**5. A Lack of A Quorum Does Not Excuse the City from Performing its Obligations under the Contract.**

Claims of conflicts of interest and a resulting lack of a quorum do not excuse the City from its obligation to perform under the contract. First, there is no clause in the contract that excuses the City from performance due to any sort of impossibility. Secondly, the lack of a quorum due to alleged conflicts of interest certainly does not create any "impossibility" for performance.

The Political Reform Act (Government Code Sections 81000 *et seq.*) creates an exception to recusal of council members with financial interests when action is required of the Council.<sup>14</sup> Here the duty of the Council to perform under the contract is clear and mandatory. The Council must take action to approve the submission of the assessment role to the County in order for the assessment to be billed by the County. Therefore, the mandatory action exception under the Political Reform Act applies. The Council must "draw straws" between the allegedly conflicted council members in order to require one to vote in order to carry out this mandatory obligation. Absent that action, the City is exposed, as discussed above, to risk related to its breach of contract and its mandatory obligation to submit the assessment role to the County.

**CONCLUSION**

It is clear based upon the above discussion that not only is it the legally correct decision to continue the CMD and submit the assessment role to the County, it is the right decision for the City. Downtown Incorporated, and its members and supporters, request the Council take the legally mandated and responsible action. Vote down the attempt to disestablish the CMD and vote to submit the assessment role to the County.

Sincerely,



David R. Hunt

DRH:js

Encl.: Agreement for Community Management District Services  
Letter from State Board of Equalization dated June 28, 2012

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<sup>14</sup> Government Code Section 87101; 2 CCR Section 18708

The Honorable Miguel Pulido  
August 3, 2012  
Page 8 of 8

cc: Paul Walters, City Manager (w/encl.)  
Sonia R. Carvalho, City Attorney (w/encl.)  
Vicky Baxter, President/CEO Downtown Incorporated  
Downtown Incorporated Board of Directors



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

RESEARCH AND STATISTICS SECTION, MIC: 67

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MICHELLE STEE  
Third District, Redding

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

KRISTINE CAZADO  
Executive Director

June 28, 2012

Downtown Incorporated  
Attn: Ms. Vicky Baxter  
305 East 4<sup>th</sup> Street, Suite 200  
Santa Ana, CA 92701

Dear Ms. Baxter:

The 2009 through 2011 annual aggregated taxable sales for the selected stores in downtown Santa Ana which you requested are as follows:

<u>Year</u>	<u>Taxable Sales</u>
2009	\$8,348,600
2010	9,178,900
2011	12,686,400

The businesses included were:

<u>Name of Business</u>	<u>Address of Business</u>
Minas Bridal	13 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
The Playground (Start 11/1/11)	220 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
Mariscos Tampico (4/1/09 - 4/30/11)	220 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
R & R Sportswear	300 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
Mega Furniture	400 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
Fallas Paredes	201 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
Calacas Café	324 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
Bistro 400	400 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
Yost Theatre (Start 8/1/11)	307 North Spurgeon Street, Santa Ana, CA 92701
Festival Hall	220 East 3 <sup>rd</sup> Street, Santa Ana, CA 92701
Teresa's Jewelers	223 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
Chapter One (Start 12/10/10)	227 North Broadway, Santa Ana, CA 92701
The Copper Door (Start 7/1/10)	225 ½ North Broadway, Santa Ana, CA 92701
Proof Bar	215 North Broadway, Santa Ana, CA 92701
Memphis Restaurant	201 North Broadway, Santa Ana, CA 92701
Lola Gaspar	211 West 2 <sup>nd</sup> Street, Santa Ana, CA 92701
Gypsy Den	125 North Broadway, Santa Ana, CA 92701
Dearden's Furniture	117 North Broadway, Santa Ana, CA 92701
Drapes Vintage Clothes (Start 4/1/10)	210 North Broadway, Santa Ana, CA 92701
Joyeria Gales Boutique (10/1/01 - 6/6/10)	312 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
Charlie's Tattoo Supplies (Start 10/22/10)	316 East 4 <sup>th</sup> Street, Santa Ana, CA 92701
Café Calacas	324 West 4 <sup>th</sup> Street, Santa Ana, CA 92701
Eibar Coffee (Start 12/1/11)	320 North French Street, Santa Ana, CA 92701
Martínez Bookstore (Start 4/3/10)	216 North Broadway, Santa Ana, CA 92701

Ms. Vicky Baxter

-2-

June 28, 2012

If you have any questions, or if I may be of any further assistance, please contact me at the above telephone number.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Trach".

Tom Trach  
Research and Statistics Section

TT:jm

WORK MAY NOT PROCEED

CLERK OF COUNCIL

RT DATE: JUN 17 2009 AGREEMENT FOR COMMUNITY MANAGEMENT  
DISTRICT SERVICES

This agreement is made on 9th day of June 2009, between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, (the "CITY") and Downtown, Incorporated, a California non-profit corporation, (the "ASSOCIATION").

RECITALS:

- A. Pursuant to its Resolution No. 2008-078 (the "RESOLUTION") the City Council of the CITY has established a community management district designated as the "Downtown Community Management District" (the "DISTRICT"), under Article XX of Chapter 13 of the Santa Ana Municipal Code (the "ORDINANCE"); and
- B. Pursuant to the Resolution and the Ordinance, assessments will be levied annually against the assessable parcels in the DISTRICT commencing with Fiscal Year 2009-2010 and continuing through Fiscal Year 2013-2014; and
- C. Such assessments may be used only for the purposes set forth in the Resolution; and
- D. The CITY desires to use the assessments to contract for the administration of a program of improvements and activities in connection with the DISTRICT for Fiscal Years 2009-2010 through 2013-14; and
- E. Section 13-209 of the Ordinance authorizes the CITY to contract with a non-profit owners association to manage the district on a day-to-day basis.
- F. The ASSOCIATION represents that it is a private nonprofit corporation registered and in good standing with the California Secretary of State qualified to serve pursuant to the Ordinance.
- G. The CITY seeks to contract with the ASSOCIATION to administer such program of improvements and activities.

NOW, THEREFORE, the CITY and ASSOCIATION mutually agree as follows:

1. TERM OF AGREEMENT

- 1.1. The term of this Agreement shall be from July 1, 2009 to and including December 31, 2014.
- 1.2. In the case of a default by the ASSOCIATION, the CITY may terminate this Agreement by giving written notice to the ASSOCIATION.

- 1.3. Upon termination or expiration of this Agreement, all unexpended moneys for the DISTRICT and all assets purchased with DISTRICT funds shall be returned to the CITY.

2. USE OF FUNDS

- 2.1. Funds received by the ASSOCIATION pursuant to this Agreement shall only be expended for the purposes stated in the Resolution and authorized by the Ordinance. Such funds shall be expended in accordance with the Management District Plan, as modified from time to time as permitted by the Santa Ana Municipal Code.

3. ASSOCIATION RESPONSIBILITIES

- 3.1. The ASSOCIATION shall administer the DISTRICT work program and perform all of the services specified in the Management District Plan and shall cooperate with the City Manager of the CITY or such personnel as the City Manager designates.
- 3.2. Throughout the term of this Agreement, the ASSOCIATION shall submit to the CITY's Finance Director the following:
  - 3.2.1. Annual Report – The ASSOCIATION shall submit a report for the current Fiscal Year complying with the Section 13-211 of the Ordinance. The timing of submittal of the Annual Report shall be as directed by the City's Deputy City Manager for Development Services.
  - 3.2.2. Financial Statements - The ASSOCIATION shall submit a statement of income and expenses of the ASSOCIATION in relation to the DISTRICT, reviewed by a Certified Public Accountant covering the previous Fiscal Year.
  - 3.2.3. Within 10 days of a request of the CITY's Finance Director, the ASSOCIATION shall provide such other financial information of the ASSOCIATION in relation to the DISTRICT as the CITY's Finance Director shall reasonably request.
- 3.3. The ASSOCIATION hereby agrees to comply with all State and local laws and regulations as they relate to the administration of the DISTRICT, including all open meeting and public records laws.

4. CITY RESPONSIBILITIES

- 4.1. The CITY shall submit to the County of Orange each year an annual assessment roll for the DISTRICT and shall disburse the DISTRICT assessment revenues



received by the CITY from the County of Orange to the ASSOCIATION in accordance with Section 5.1 hereof.

- 4.3. With respect to any public agencies for which the County of Orange does not bill the annual DISTRICT assessments, the CITY shall hand bill such agencies for the DISTRICT assessments, provided that the CITY shall have no responsibility to enforce the collection of such assessments.
- 4.4. The CITY shall make available to the ASSOCIATION such information in its possession, except for information which is determined to be confidential information by the City Attorney, which is necessary for implementation of the DISTRICT work program.
- 4.5. The CITY shall report to the ASSOCIATION on a regular basis as to the status of DISTRICT assessment revenues thus far collected so that the ASSOCIATION can adjust its budget and work program accordingly.

5. DISBURSEMENTS

- 5.1. Commencing with Fiscal Year 2009-2010 and continuing through Fiscal Year 2013-2014, the CITY shall annually remit to the ASSOCIATION the DISTRICT assessment revenues collected by the County of Orange and paid to the CITY within 30 days of receipt of such revenues by the CITY from the County of Orange.

6. AUDITS, ACCOUNTING AND AUDIT EXCEPTIONS

- 6.1. The ASSOCIATION's program, as it relates to the DISTRICT, will be audited in accordance with policy and funding guidelines established by the CITY from time to time. The CITY or its authorized representatives shall, with 10 days' prior notice, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property and premises of the ASSOCIATION, at the ASSOCIATION's place of business.
- 6.2. The ASSOCIATION's staff will cooperate fully with authorized auditors when they conduct audits and examinations of the ASSOCIATION's program, as it relates to the DISTRICT. If indications of misappropriation or misapplication of the funds governed by this Agreement cause the CITY to require a special audit, the cost of the audit shall be paid by the ASSOCIATION. Should it be subsequently determined that the special audit was not reasonably warranted, the amount will be restored to the ASSOCIATION. The right to audit, as provided by this Section, shall be for a period of three (3) years from the date of submission of the financial report in question or any indication or notice to the CITY of any misappropriation or misapplication of funds by the ASSOCIATION, whichever is later.

- 6.3. The ASSOCIATION will establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to the DISTRICT under this Agreement and shall substantiate all such costs, meeting acceptable standards for major public entities in Southern California and complying with any applicable Federal standards. The system shall meet the minimum fiscal and internal control requirements as reasonably determined by the CITY.

7. INSURANCE

ASSOCIATION shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this agreement, including any extensions thereto. The policies shall state that they afford primary coverage.

- 7.1.1 General Liability with minimum limits of at least \$1,000,000 combined Premises/Operations and Personal Injury coverage is required. The City of Santa Ana, its directors, commissioners, officers, employees, agents and volunteers must be endorsed on the policy as additional insured as respects liability arising out of the ASSOCIATION's performance of this Agreement.

- A. If ASSOCIATION employs other contractors as part of its performance under this agreement, Contractor's Protective Coverage is required. ASSOCIATION may insure all subcontractors under its own policy or shall procure and furnish separate insurance for each subcontractor, meeting the requirements set forth herein.
- B. Blanket Contractual Coverage.
- C. Personal Injury and Advertising Coverage.

- 7.1.2 ASSOCIATION shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

- A. Provide copy of permissive self-insurance certificate approved by the State of California; or
- B. Provide a copy of permissive self-insurance certificate approved by the State of California; or
- C. To the extent that the ASSOCIATION has employees, the ASSOCIATION shall secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of \$1,000,000 per accident. The policy shall be endorsed to waive all rights of

subrogation against City, its directors, commissioners, officers, employees, and volunteers for losses arising from performance of this Agreement; or

D. Provide a signed statement certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

7.1.3 ASSOCIATION shall procure and maintain at its own expense a policy covering its Directors & Officer Liability with minimal limits of \$1,000,000.

7.1.4 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice to CITY, and that coverage is primary to any other coverage available to CITY.

7.1.5 Prior to commencement of performance, ASSOCIATION shall furnish CITY with a certificate of insurance for each policy. Each certificate is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) must be in a form approved by CITY. CITY may require complete, certified copies of any or all policies at any time.

7.2 Failure on the part of the ASSOCIATION to procure or maintain required insurance shall constitute a material breach of contract under which CITY may immediately terminate this agreement.

7.3 The City Manager of the CITY is hereby authorized to modify the insurance requirement of this Section as he or she may deem appropriate from time to time provided such modification does not cause insurance cancellation..

## 8. NOTICES

8.1. All notices, plans, or reports permitted or required under this Agreement shall be in writing, and shall be deemed made when personally delivered to the following persons as provided in this Agreement. Additionally, such notices shall be deemed made 48 hours after deposited in the U.S. Mail, first class postage prepaid and addressed to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY OF SANTA ANA  
20 Civic Center Plaza M-25  
Santa Ana, California 92701  
Attention: Deputy City Manager of Development Services

DOWNTOWN, INCORPORATED  
305 E. 4th Street, Suite 200  
Santa Ana, CA 92701  
Attn: President

9. RESERVED.

10. NONDISCRIMINATION.

- 10.1. The ASSOCIATION represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of political affiliation or opinion, age, ancestry, marital status, physical condition, pregnancy or pregnancy-related condition, race, religion, color, sex, sexual orientation, national origin or medical condition.


11. GENERAL PROVISIONS.

- 11.1. Assignment. Neither this Agreement, nor any interest herein, shall be assigned by any party without the prior written consent of the other party.
- 11.2. Independent Contractor. It is agreed and understood that the ASSOCIATION is a wholly independent contractor. This Agreement is not intended and shall not be construed to create the relationship of agent, employee, servant, partnership, joint venture or association as between the CITY and the ASSOCIATION. Neither the CITY nor its agents shall have control over the conduct of the ASSOCIATION except as set forth herein. The CITY shall have no liability or responsibility for payment of any wage or benefits to the ASSOCIATION's employees, for whom the DISTRICT shall bear sole responsibility and liability.
- 11.3. Default of Contractor. In the case of default by the ASSOCIATION in providing any service, or in performing this Agreement, the CITY may, in addition to all other remedies it may have, including but not limited to termination of the Agreement and/or filing of a suit at law or equity, obtain such services from other sources and deduct the cost thereof from any costs due or thereafter owing to the ASSOCIATION relating to such items or to otherwise claim and collect such costs provided City has advised ASSOCIATION of such failure to perform such services and ASSOCIATION has been given a reasonable amount of time to cure such default.
- 11.4. Indemnity. The ASSOCIATION shall indemnify and hold the CITY harmless and defend, with counsel acceptable to the CITY, the CITY and every officer, employee and agent of the CITY, from any and all claims, causes of action, damages to persons or property, penalties, obligations, liabilities or financial losses, including, without limitation, attorney's fees and court costs arising directly or indirectly from any or all negligent or other wrongful acts, errors or


omissions of the ASSOCIATION, its agents, employees and subcontractors in the performance of this Agreement.

- 11.5 Indemnity. The CITY shall indemnify and hold the ASSOCIATION harmless and defend, with counsel acceptable to the ASSOCIATION, the ASSOCIATION and every officer, director, employee and agent of the ASSOCIATION, from any and all claims, causes of action, damages to persons or property, penalties, obligations, liabilities or financial losses, including, without limitation, attorney's fees and court costs arising directly or indirectly from any or all negligent or other wrongful acts, errors or omissions of the CITY, its agents, employees and subcontractors in the performance of this Agreement.
- 11.6. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may only be modified in writing signed by both parties.
- 11.7. Governing Law. This Agreement shall be governed by the laws of the State of California.
- 11.8. Time of Essence. Time is of the essence of each and every provision of this Agreement.

ATTEST:

  
Patricia E. Healy  
Clerk of the Council

CITY OF SANTA ANA

By:   
David N. Ream  
City Manager

APPROVED AS TO FORM:

  
Joseph W. Fletcher  
City Attorney

DOWNTOWN, INCORPORATED

By:   
Its: President

# **SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT**

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## **CITY OF SANTA ANA SPECIAL ASSESSMENT DISTRICT**

### **SUMMARY**

In July of 2011, the Orange County Grand Jury received a complaint requesting that it conduct an inquiry into the establishment of a Community Management District (CMD) in the City of Santa Ana, Ca. Such specially established assessment districts are frequently referred to as "Property Based Improvement Districts" or PBIDs.

After a preliminary investigation, it appeared that certain irregularities took place regarding the election process that established the district. It was also alleged that a sufficient number of property owners within the district objected to the process and have sought relief through a petition to "disestablish" the district and filed a petition to do so with their elected representatives on the Santa Ana City Council. This petition has been repeatedly re-calendared by the Santa Ana City Council without making any definitive decisions as to the substance of the petition. These actions or lack thereof, have prevented these petitioners from receiving their rightful consideration.

### **METHODOLOGY:**

The 2011-2012 Orange County Grand Jury took the following steps to investigate the citizen's complaint letter. They:

- Compiled and read documents related to the complaint;
- Interviewed by phone and in person individuals related to the complaint;
- Interviewed city officials;
- Researched public documents relating to ethics of public officials;
- Reviewed applicable statutes and case law;
- Evaluated the compiled information; and
- Generated this report.

### **HISTORY:**

For many years, almost from its very inception, the City of Santa Ana has had a downtown shopping and business district known as "Fourth Street". It has a long cultural history of Hispanic influence and atmosphere.

Approximately twenty-five (25) years ago, it came to be known as the "Fiesta Marketplace", a reference to a business entity which began private development in the immediate area. Fiesta Marketplace initially consisted of majority and minority partners, each of whom owned various parcels of commercial property within the immediate vicinity of this "downtown" area. The "Fiesta Marketplace" originated in 1985 for the purpose of the general improvement of Fourth Street. Some of the improvements were to be financed through various funding sources

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

including the United States Department of Housing and Urban Development, as well as tax-exempt bonds

While the original intent appeared to be an effort to preserve the area's Hispanic and cultural identity, subsequent efforts began to erode the very proposition that was supposed to preserve this "redevelopment" area.

By 2006 and 2007, actions by the city and the developers were perceived as efforts to "gentrify" the downtown area in what one newspaper reporter referred to as an "obvious effort to replace the city's Mexican themed atmosphere with something more in keeping with a yuppie clientele." Additional planning proposals included efforts to change the housing and business identities of the downtown area with the addition of new apartment and condominium projects. Some citizens saw this as a "Forced Gentrification Plan" along with other descriptions such as the "Remove the Poor Mexicans from Downtown Santa Ana Plan".<sup>1</sup>

Under any terms or descriptions, the changes being proposed were destined to create a cultural conflict. As explained by the city planners in the "Renaissance Plan", "The community's heritage needs to be celebrated to express and enjoy the important aspect of daily life. Often when communities forget their past they lose their cultural meaning and stand to seriously dilute any future identity."<sup>2</sup>

In response to the concerns being voiced, by 2008, city officials were making promises to amend their earlier redevelopment plans giving more consideration to the cultural history of the downtown area.

But in 2008, the City of Santa Ana initiated a program that offered financial rebates to the business owners in the downtown area to improve the facades of their buildings. The "Fourth Street Façade Program" allocated one million, two hundred and fifty thousand dollars (\$1,250,000) for improvements to building fronts with a supposed limitation of \$75,000 per storefront. However, for various reasons, the money went to only three (3) property owners:

CM Theater LP (West End Theatre).....	\$ 63,814.77
Gumm & Livingston Investments (Pacific Building)....	\$110,191.00
Fiesta Marketplace Partners (S & A Properties).....	\$765,000.00

The vast majority of these rebate dollars went to the same property owners/developers who comprised the majority interest in the "Fiesta Marketplace" entity, i.e. those developers who were the primary interests in changing the culture of the area.

These same property owners/developers have, and continue to have, extensive connections to the newly formed non-profit business group called Downtown, Inc. As of this writing, these developers presently serve as the officers and directors of Downtown Inc., the entity the City of Santa Ana chose to manage the proceeds from the special assessment.

<sup>1</sup> Orange County Register, Dec. 23, 2007

<sup>2</sup> Ibid

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

Also, in 2008, the City of Santa Ana began efforts to establish a new "CID" or Community Improvement District for the same area

### **FACTS:**

In 2007, the City of Santa Ana began to review various options on how to increase revenues available for improvements in that business district commonly referred to as "downtown."

In January of 2008, the city formed the Management District Formation Committee for the purpose of developing a Community Management District (CMD). The committee also began working with a consultant in an effort to define the specific area to be considered as part of any district and to develop the actual management plan.

From June through October of 2008, the petitioning process took place.

On July 7, 2008, the City of Santa Ana City Council added Article XX to Chapter 13 of the Municipal Code allowing for the establishment of CMDs. This ordinance differs significantly from state law in that the ordinance set "pre-formation petitioning" at 30% of the proposed district value while the state normally required 50%. Also, the life span of the CMD was set for 10 years while state law limits the life span to five years, with renewals of 10 year periods

On August 5, 2008, Downtown Inc., the newly formed non-profit organization filed Articles of Incorporation with the Secretary of State with the intention of becoming that organization which would manage the proceeds from the new CMD. This non-profit organization had a board of directors that consisted of the very same developers who were pursuing the developmental changes for the downtown area.

On August 18, 2008, the Santa Ana City Council adopted Ordinance No. NS-2771... "An Ordinance of the City Council of the City of Santa Ana Adding Article XX to Chapter 13 of the Santa Ana Municipal Code Related to Establishment of Community Management Districts"

On August 29, 2008, the Santa Ana City Council adopted the CMD plan, and on October 6, 2008, declared its intention to go forward with the establishment of the CMD. On October 16, 2008, a notice of public hearing in this regard was issued, and a public hearing was set for December 1, 2008

The voting process to establish "property based improvement districts" is based upon the assessed value of the properties and not on an individual or "one man-one vote" rule.

On December 1, 2008, the following voting tabulations were reported to the City Council. The tabulations were reported in two ways, i.e. one including the ballots from the Town Square Condominium project and one excluding the project:



## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

### Including Town Square:

In support: (31) representing \$301,510 or 59.7% of total assessed value.  
Opposed: (73) representing \$203,556 or 40.3% of total assessed value.

### Excluding Town Square:

In support (27) representing \$301,252 or 60.03% of total assessed value.  
Opposed (42) representing \$200,558 or 39.97% of total assessed value.

A cursory review of this tabulation shows that a minority (27) of the "in support" votes controlled a majority of the total assessed value. This became a critical issue as the district became operational.

On December 15, 2008, the clerk of the City Council "certified" the voting results and certain items are of significant note.

Ballots mailed: 421

Ballots returned: 107

Ballots returned from Town Square Condominium Project 35

Ballots returned (excluding Town Square): 69

### Total weighted assessment amounts of returned ballots:

All ballots: \$505,066

Excluding Town Square: \$501,810

These numbers are problematic in that only twenty-five percent (25%) of the ballots were returned. This would indicate the existence of administrative problems with the procedure, disinterest by the voters, a lack of understanding as to the ramifications of the voting, or a combination thereof.

However, based upon these results, the City Council moved forward with a resolution to establish the "Downtown Santa Ana CMD." On April 21, 2009, the Santa Ana City Council authorized the execution of an agreement with Downtown Inc., the non-profit corporation.

On May 4, 2009, the Council approved a resolution to modify the original plan to change the dates of implementation to reflect a new and different period from January 1, 2010, to December 31, 2014.

On May 18, 2009, a public hearing was conducted related to the proposed amendment to the original plan.

On September 17, 2009, approximately 10 months after the votes were certified by the City Clerk, Downtown, Inc. sent correspondence to the property owners announcing the results of the vote and the subsequent establishment of the CMD and in November of 2009, the first assessments were delivered to the property owners in the newly established CMD.

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

Many of the property owners claimed they were taken by surprise at the existence of the assessment much less the amounts. In many cases, their property taxes with the assessment doubled and in some cases tripled. Many assessments went unpaid and many properties were threatened with legal actions.

As more of the assessments became known, the protests from those most affected became more vocal and louder.

On August 1, 2011, a notice for a public hearing was issued indicating the city's intent to modify the boundaries for the downtown CMD. "Considerable dissention took place at this hearing alleging mismanagement issues associated with Downtown Inc., and the mayor pro tem directed staff to prepare a resolution for the "disestablishment of the PBID." A second city councilman indicated that any modifications to the original district area is considered a new district, and cites Proposition 218 in support of that position.

On August 24, 2011, a public hearing was held wherein numerous speakers addressed the city council. The majority of the speakers objected to the PBID indicating that proper procedures were not followed in its establishment, that the assessments being made did not provide a proportional benefit as required by applicable law, and requested that the PBID be "disestablished." Subsequent comments from city council members revealed a lack of consensus as to what actions if any could, or should, be taken. At least three (3) of the members of the city council agreed that certain changes had to take place, most notably in the manner in which Downtown Inc. was organized and conducting the business of administering the PBID. At this council meeting, the council agreed to allow an amendment to the boundary of the PBID.

On September 11, 2011, the city council again met to discuss the disestablishment of the PBID. Again, extensive discussions took place regarding the manner in which the PBID was established, whether it should continue, a lack of transparency by Downtown Inc., and mismanagement issues with Downtown Inc. The lack of consensus amongst the council continued and the matter was continued until October 3, 2011.

On October 3, 2011, a resolution was introduced before the city council to disestablish the PBID pursuant to Article XX, Chapter 13, of the Santa Ana municipal code. Multiple petitions had been received by the city calling for the disestablishment, "specifically, the City Clerk received fifty-six (56) signatures on petitions protesting against the existence of the CMD." The resolution also states that "there are questions regarding the overall support for the CMD from the remaining property owners during the vote if the City had not cast votes in support of the CMD." Comments at this meeting included statements that fifty-nine (59) signatures requesting disestablishment had been received, and that the proposed budget submitted by Downtown Inc. was "substandard." The matter was again continued until November 7, 2011.

On November 7, 2011, the Mayor Pro Tem asked the city council to "clean things up." She further stated that the council never approved the bylaws or the agreement, i.e. with Downtown Inc. Furthermore, she stated that "State Law has a Clause for Disestablishment that was deleted from the Resolution that approved the Santa Ana Ordinance." Three motions were made: (1) to set a public hearing for the disestablishment of the PBID; (2) to have an advisory election

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

without the city's vote; (3) to add a process for disestablishment. All three motions died for a lack of votes.

### **ANALYSIS**

Fiesta Marketplace Partners owns 145,000 square feet of retail and office buildings, with approximately 45 tenants in downtown Santa Ana. When first developed in the late 1980s, Fiesta Marketplace was specifically oriented to Hispanic shoppers. Most recently, the area has been renamed East End.

The 66-block special assessment district includes 312 property owners and approximately 800 businesses. Property owners have been ordered to pay assessment fees for extra security, marketing and promotional events in the immediate area. A considerable portion of these expenses are related to the "newer" businesses such as restaurants and nightclubs.

The developer in this matter has indicated publically that his relationship with the City of Santa Ana was, in many instances, "informal." He further indicated that this was possible because "city staff had a rough idea of whether the City Council would back their plans." "That's the kind of relationship I had with them. They said something, they did it. I said something, I did it." However, he also stated that after the allegations of "gentrification" were made, the "political atmosphere started to turn sour, and city staff became less confident in making agreements." "It was as if one day you could trust what staff was saying, then the next day they were scared and couldn't commit to anything."<sup>3</sup>

In regard to many of the smaller shopkeepers the developer stated: "They're in business because I'm propping them up. But I can't do that forever. Some of them are going to make it because they are going to change, and others are just going to keep doing things the way they've always done, and they will fail."<sup>4</sup> "In order for the retailer to adapt, they're going to have to figure out what to sell and how they're going to sell it," he said.

There is significant opposition to the PBID, the procedures used in its formation, and to how Downtown Inc. is managing the proceeds, from many area business owners. Many comments were made in local newspapers and neighborhood publications.

One shop keeper said some of the changes taking place are hurrying the trend of Spanish-speaking customers seeking other places to shop. "This plan should have, from the beginning, been inclusive and gotten all the merchants together so they're not forcing anyone out—but that didn't happen," he said.

The comments from that merchant reflected the attitude of many others. "What are we paying for? They don't do anything for us. They only care about nightlife and bringing in the wealthy, but those people aren't going to help my business." There have been additional allegations that the proceeds from the assessments from "struggling property owners" are being utilized for the

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<sup>3</sup> Voice of OC, July 22, 2011

<sup>4</sup> NY Times article October 30, 2011

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

benefit of certain individuals. That merchant also stated "So many people donated their time and money to helping the downtown and to see this infuriates me so much "

By August of 2011, the level of discord and combative rhetoric had reached a high level of intensity. By this time, the special assessments had taken place, the actual amounts of the moneys due were known, many had gone unpaid, and actions were being taken to collect those in arrears. This was taking place during a time of economic distress as well.

The primary influences promoting the changes to this consistently historical area were the developer on the one hand with resistance by the cultural traditionalists on the other, with the latter being forced to pay for the changes which they vigorously opposed. They were being assessed monies that were being used to change the identity of the very area that they had long cherished.

Allegations of racism inevitably became an integral part of the dispute and further escalated the loudness of the discussion and the intensity of the differences.

Many property owners complained that the special assessment district was illegal in its formation, and that the promoters of the special district deliberately eliminated the disestablishment procedure. The petitions to disestablish the assessment district were in an amount representing numbers considerably in excess of the minimum required and have been submitted to the City of Santa Ana.<sup>5</sup> It is also alleged that the City of Santa Ana voted its interest in the formation process in violation of the proper procedures established by law and that their vote constituted 38% of the votes needed to establish the district. The results have caused, on average, a doubling of the financial burdens on the respective properties.

Additionally, these property owners point out that the majority of the proceeds of the assessment are being utilized in a manner that benefits a particular clientele, those related to the business interests of the developers with little or no benefit to the majority of the property owners. They believe that they are paying a significant surcharge on their properties that they cannot afford, for services that are of no benefit to them or their businesses, with the result that they will be driven out of business, and have become disenfranchised and disillusioned.

And, although numerous requests and proposals for relief were made to the Santa Ana City Council, continuing inaction by the city council has aggravated an already serious situation.

A significant number of issues have arisen related to the procedures required to establish a Community Improvement Districts. Many of these issues are directly related to the originating ordinance approved by the City Council while others are related to specific provisions of the California Government Code and the Constitution of the State of California.

*"Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed*

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<sup>5</sup> Streets and Highway Code Section 36670(a)

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

*assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property."*<sup>6</sup>

*At the conclusion of the public hearing conducted pursuant to subdivision (d) an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment (emphasis added) shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. For the purposes of this section, an impartial person includes, but is not limited to, the clerk of the agency. If the agency uses agency personnel for the ballot tabulation, or if the agency contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the assessment, the ballots shall be unsealed and tabulated in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process."*<sup>7</sup>

Furthermore, in 1996, the voters of the State of California passed Proposition 218 (Cal. Const., art. XIII D). Considerable interpretation was given to this provision in 2008 by the courts:

*"Before Proposition 218 became law, special assessment laws were generally statutory, and the constitutional separation of powers doctrine served as a foundation for a more deferential standard of review by the courts. But after Proposition 218 passed, an assessment's validity, including the substantive requirements, is not a constitutional question. There is a clear limitation however, upon the power of the Legislature to regulate the exercise of a constitutional right. All such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it. Thus, a local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect."*<sup>8</sup>

The court further states that:

*"Under the plain language of Proposition 218 (Cal. Const., art. XIII D), a special benefit must affect the assessed property in a way that is particular and distinct from its*

<sup>6</sup> California Government Code section 53753(b)

<sup>7</sup> California Government Code section 53753 Subsection (e)(1):

<sup>8</sup> *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority*, 44 Cal.4th 431.

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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*effect on other parcels and that real property in general and the public at large do not share.*"<sup>2</sup>

*A "tax" can be levied without reference to peculiar benefits to particular individuals or property. But, a special assessment, unlike a tax, must confer a special benefit upon the property assessed beyond that conferred generally. "An assessment can be imposed only for a "special benefit" conferred on a particular property"<sup>19</sup>. An assessment is "invalid" if it does not comply with the special benefit and proportionality requirement of Proposition 218, or if it fails to "directly connect any proportionate costs of and benefits received from the permanent public improvement."*<sup>20</sup>

It has been alleged the tabulation of the ballots was not performed in a manner consistent with requirements of the Government Code. Because the City of Santa Ana placed its interest into the process by voting, it now had a vested interest in the outcome of the process, and thereafter used its own clerk's office to conduct that tabulation, there is a lack of impartiality, or certainly the appearance of one.

The language of the applicable constitutional provisions is clear and unequivocal as to its intent as well as to when such assessments are to be allowed and the manner in which they are to be appropriated. As stated above: **"A special assessment must confer a special benefit upon the property assessed, beyond that conferred generally."** (emphasis added)

Furthermore, in light of the history of this area over the past twenty-five (25) years, the way in which public money has been channeled to a select few, and with these select few continuing to exercise control over the proceeds produced by this assessment district, there exist strong reasons to suspect that appropriate procedures were not followed.

Most importantly, the actions taken by the developers, the confusion which took place in the voting process, the failure to comply with the legal requirements relating to special assessment districts, the difficulties associated with businesses in a period of economic limitations, and the lack of civility in the discussions, have resulted in tumultuous circumstances at best. These circumstances have become unmanageable and can only result in serious financial difficulties for all concerned. The developers will be in danger of having abandoned properties as the smaller business seek alternatives elsewhere, and those that cannot afford the change will be put out of business. The City of Santa Ana will continue to suffer the financial drawbacks associated with those conditions.

The City Council of Santa Ana has been placed on notice on numerous occasions as to their lack of compliance with the legal requirements well established in California law as related to the establishment, management, and continuance of special assessment districts. Its continuing disregard of the concerns of the majority of the citizens being impacted by these circumstances constitutes a disenfranchisement and disservice to its constituency. The time has long past for the city managers and the city council to step back, reflect on what has taken place and take

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<sup>21</sup> Ibid

## **SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT**

corrective actions. Continuing to ignore this matter can only result in further discourse, both conversationally and legally, which will be detrimental to all.

### **FINDINGS:**

In accordance with California Penal Code §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the Findings/Conclusions presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its study of the Santa Ana Property Based Improvement District, the 2011-2012 Orange County Grand Jury makes the following Findings/Conclusions:

**F1.** City of Santa Ana appears to be in violation of California State Law in the formation of this Improvement District

**F2.** Monies collected from the improvement district appear to have only benefited a few and have not resulted in a direct benefit to the assessed property as required by California law.

**F3.** An appearance of impropriety exists in the relationship between the developer and the City of Santa Ana.

**F4.** An appearance of impropriety exists in the relationship between the developer and Downtown Inc., the administrator of the funds from the special district.

**F5.** The process by which the district was established in regard to the mailing of ballots, the process of tabulation, and the voting by the City of Santa Ana does not appear to be in compliance with the statutory requirements for establishing an assessment on property owners.

### **RECOMMENDATIONS:**

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its study of the Santa Ana Property Based Improvement District, the 2011-2012 Orange County Grand Jury makes the following recommendations:

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

**R1.** The City of Santa Ana should request that its City Attorney or independent counsel conduct an investigation into whether the City of Santa Ana complied with the requirements of establishing a formation district, whether that district benefits all property owners proportionately, and whether there are any violations or conflicts of interest. If so, the City of Santa Ana should immediately take action to disestablish the district.

**R2.** The Santa Ana City Attorney and the Orange County District Attorney should investigate the alleged violations of election laws and procedures.

### **REQUIREMENTS AND INSTRUCTIONS:**

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court

*"Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations."*

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for



## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

### **Responses Required:**

<b>Respondent</b>	<b>Findings</b>	<b>Recommendations</b>
City Council of Santa Ana Orange County District Atty.	F1, F2, F3, F4, F5	R1, R2 R2

## Middleton, Samuel

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**From:** Wendy Haase <wendy@travelsantaana.com>  
**Sent:** Monday, November 14, 2022 10:11 AM  
**To:** eComment  
**Subject:** Support for the Downtown Santa Ana Business Improvement District

Dear City of Santa Ana Staff and Elected Officials,

Please accept this letter in support of Agenda Item 26 (Option #2).

Travel Santa Ana believes the BID is vital to our city center's success. Without their efforts, the events that distinguish Santa Ana from every other Orange County destination are at risk, including Artwalk and Savor. These events are not only enjoyed by residents but draw visitors from throughout the region whose dollars support Santa Ana's economic vitality.

The BID proves to be a valuable partner of Travel Santa Ana's in co-coordinating an inaugural downtown familiarization tour for Santa Ana's hotel community; the introduction of downtown businesses whose support of the destination marketing organization's efforts are imperative; and sharing of communications that are mutually beneficial.

We ask that you approve moving the downtown levy forward for a public hearing on December 6<sup>th</sup>, which would allow the businesses to show support in continuance of the BID (option #2). Thank you.

Sincerely,

**Wendy Haase, CDME • President & CEO**  
wendy@travelsantaana.com • 714.242.4434  
www.travelsantaana.com



## Middleton, Samuel

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**From:** Tapferx4 <tapferx4@aol.com>  
**Sent:** Sunday, November 13, 2022 11:51 AM  
**To:** eComment  
**Subject:** Agenda Item #26/ SAVE THE BID

Re: SAVE THE BID/ Agenda Item #26

Dear Mayor, City Council and Staff,

I am writing to you in my personal capacity to plead with you to Save the BID. My name is Kim Tapfer and I am the part owner and property manager of the First National Bank Building (102-106 W. 4<sup>th</sup> Street.) It has been a great privilege to own the building and to continually restore this Historic treasure of the Downtown. We work hard to ensure that the First National Bank building is a vibrant and safe place for people to work.

The partnership and support we have received from both Downtown Inc. and SABC Inc. has been tremendous and continually fuels our desire to stay and invest in the Downtown. Every week I am brought up to speed by the DTI Newsletter, I attend the monthly SABC board meetings, volunteer at events like Savor Santa Ana and the downtown breakfast. Because of the BID I have met all of you and feel totally connected with the City of Santa Ana. In times of difficulty, both with Ryan Smolar and Madeleine Spencer, the BID consultants, have been indispensable in helping us overcome various challenges. Because of the BID I feel like I am a valued member of the community and it makes the Downtown feel more like a home than just a place where I work.

The ending of the BID would be devastating to me. This critical touch point for me would be no longer. The consultants I turn to, the Newsletter, Artwalk, the Board meetings, Savor Santa Ana, Boca del Oro would all be no more. I fear, rightly, that crime, vandalism and graffiti will all increase because of the lack of programming, advocacy and oversight by the BID. For me, if the BID is eliminated from the Downtown, the Downtown will feel totally different, much less welcoming and safe.

WHY would you throw out the BID when both Downtown Inc. and SABC are more than open to improving our service in the downtown by combining and/or entire revamping how the BID operates? Isn't it wiser to attempt to fix what is wrong with the BID instead of just eliminating it? The voices of protest are important and should be listened to but their complaints can be satisfied easily with better communication and representation.

In my view, ending the BID will cause irreparable damage to the Downtown and I fear the damage will go far beyond anything we can anticipate. Certainly, we know that years of work to build social media platforms, meaningful partnerships and enduring relationships will be just flushed down the drain. Because of all this I urge you to please save the Downtown BID.

Sincerely,

Kim Tapfer  
106 W. 4<sup>th</sup> St, Suite 211  
Santa Ana, CA 92701

## Middleton, Samuel

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**From:** Mimi Mar <mimi.mar@thepizzapress.com>  
**Sent:** Friday, November 11, 2022 6:02 PM  
**To:** eComment  
**Subject:** Bid for DTSA

Hello Mayor Sarmiento and distinguished Council Members:

I am writing in support of a BID program for DTSA. I've heard alot merchants complain about not benefitting from the BID program. I, on the other hand, have benefitted from the BID over the years and have received support from the various members. I hope the BID continues and that the people involved with the BID make the program more transparent and inclusive. From hearing the complaints at the recent town hall meeting, it seems like some of my neighbors feel left out. No one wants to be left out. Especially if they contribute to the BID fund.

It's been a tough struggle for all the merchants here in DTSA these past few years with the pandemic and then the construction mess with OCTA. A lot of business owners have lost money or are trying to keep their heads above water. We need a BID program to benefit everyone.

I urge you to have in place a BID program that all the DTSA business owners can benefit from.

Thank you,

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PIZZA PRESS  
**PIZZA PRESS**

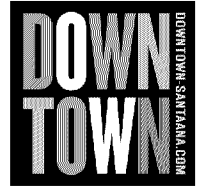
**Mimi Mar**

**Manager - Santa Ana Location**

117 W 4th Street, Santa Ana, CA 92701

Tel: • Store (714) 760-4425 • Cell (714) 273-8210

[mimi.mar@thepizzapress.com](mailto:mimi.mar@thepizzapress.com) <https://www.thepizzapress.com/location/santa-ana-ca/>



Downtown Inc  
201 E 4th St.  
Santa Ana, CA 92701

November 10, 2022

Mayor, City Council and Staff  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

RE: SUPPORT THE DOWNTOWN BID

Dear Mayor, City Council and Staff,

I am excited to write on behalf of all of our Downtown Inc board members, a dozen stakeholders who make up a diverse representation of those to be levied, in support to move forward with the processes to renew the business improvement district. The Downtown Santa Ana business improvement district has been around for nearly 40 years and it proved itself once again during the toughest year downtown has probably ever seen.

We started the year off by writing a DTSA 2022 Marketing Plan that covers 10 areas of activity and 35 supporting strategies to be executed. We shared this plan with elected officials, City staff, our downtown boards, online via our newsletter and we walked copies of it down the street for feedback and additional ideas. After 6 months of implementation, we distributed a point-by-point, mid-year progress report. Attached you will find our 2022 annual report which serves as an overview of accomplishments across our many areas of focus.

We continue to work well with our partners, the Santa Ana Business Council and we seek more support and connection with the City of Santa Ana as we hope for downtown to recover stronger than it was before the double hit of the pandemic and construction. This will require us being able to raise support from mechanisms like the business assessment, find solutions for the dip in parking revenue that has crushed our Downtown Merchant Fund, and we need the City to initiate a professional, consultant-led path forward to make a visionary plan for downtown, its management structure and its funding mechanisms.

We recognize that several businesses showed up to the Community Redevelopment Commission this year and expressed their frustration with the BID. We listened carefully to what they and the Commission said and have worked with SABC to provide a fact sheet to help clarify many misunderstandings that they expressed about how our budget works and what we do. We also are working with SABC and grassroots merchant organizers and are holding a town hall this Friday to clear the air and correct misinformation which has spread around downtown.

In addition, SABC and DTI have intensified our talks city staff about merging the BID groups and have to come to an agreement between the 2 groups that we think is reasonable and provides a path forward. Both groups boards have voted to approve the below plan and hope that the City and Council will help and support in its implementation so we can all work together to get back to business and making the Downtown the best it can be.

- Downtown Inc (DTI) and Santa Ana Business Council (SABC) will each elect 5 current board members to a newly formed board
- A Downtown wide vote amongst any BID paying member will take place to elect 5 new board members (cannot have ever served on either board)
- A new 15 person board will be created which will elect new leadership board, create new budget / strategic plan, etc.
- Assuming approved by majority of Downtown businesses at Dec 6th hearing, approve current BID levy hearing and begin 2023 with the budgets submitted for continuity of our basic operations until new board can be formed

Concurrently, as referenced above, we would ask that the City hire a BID expert to evaluate best practices for moving forward. We would also request that a high ranking City staff member, along with a City Council person, be non voting board members, as it is integral that the City decision makers are a part of this to be successful.

We continue to believe the BID is incredibly valuable to our merchants and the City and we cannot imagine how Downtown would look without our weekly newsletter, social media, events, advocacy, partnerships and customer service. It would frankly be devastating and turn back the clock further, which after COVID and streetcar construction, can't afford to happen.

Let's acknowledge the extreme pressure and challenges of this year and the frustration and struggles many have experienced, but let's also recognize all the great work that has been done, and that we're better together, united and working together for Downtown. The BID is the cornerstone of our downtown's cooperative leadership and I urge you to move this item forward.

Sincerely,

Ryan Chase  
Ryan Chase  
President, Downtown Inc.

Raul Yanez, President of SABC Inc., on and behalf of SABC Inc., has read and approved of this letter.

**Middleton, Samuel**

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**From:** Maria Ceja <ceja.maria95@gmail.com>  
**Sent:** Tuesday, November 15, 2022 10:54 AM  
**To:** eComment  
**Subject:** item 26

Dear Mayor and City Council,

I am in support of dissolving the Downtown Business Improvement District (BID) and conducting outreach that centers the most marginalized and impacted downtown businesses that consider a community-based model for the future of our downtown. The reality is that the BID failed to reflect the needs and culture of our community. It's time to bring Santa Ana's culture back that prioritizes all residents.

Best,  
Maria Ceja

## Middleton, Samuel

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**From:** Bil <onelbil99@gmail.com>  
**Sent:** Sunday, November 13, 2022 8:50 PM  
**To:** eComment  
**Subject:** SUPPORT FOR THE DOWNTOWN SANTA ANA BUSINESS IMPROVEMENT DISTRICT  
BID

City Manager, Council and Mayor  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

Dear City of Santa Ana Staff and Elected Officials:

*THIS LETTER SUPPORTS AGENDA ITEM 26 (OPTION #2)*

I am a Downtown Inc boardmember and downtown stakeholder and I feel the BID is critical to my neighborhood's success. As a resident of Downtown Santa Ana, I see first-hand the positive impact the BID has on safety, cleanliness, awareness and the overall well-being of our businesses through promotion, partnership, communication and activation.

The end of the BID means the end of Artwalk, Savor Santa Ana, numerous business affinity groups and the DTSA brand awareness that has been built up over many years. The end of the BID also means reduced security, a likely rise in vandalism and sidewalks littered with trash. Is that the image Santa Ana wants to project?

I ask that you approve moving the levy forward for a public hearing on Dec. 6, where a majority of businesses will support the continuance of the BID (option #2 before you).

Please refer to our organization's end of year report submitted by our board president, Ryan Chase, which details our many accomplishments this year.

Respectfully,

William Schroeder  
206 N. Bush St.  
Santa Ana, CA 92701

Sent from my iPad



## Middleton, Samuel

---

**From:** Rosalina Davis <ocrosalina@yahoo.com>  
**Sent:** Sunday, November 13, 2022 8:36 PM  
**To:** Sarmiento, Vicente  
**Cc:** eComment  
**Subject:** Downtown BID Agenda Item 11-15-22

Dear Honorable Mayor Sarmiento and Councilmembers:

Reference: Support of Dissolution of BID Downtown

Request to have this document entered into your records for City Council Meeting 11/15/22

My name is Rosalina Davis and I am from the City of Placentia where my family and I have had a business as owners/operators for over 57 years in Old Town. I am the President of our downtown merchant's group and we have excelled in all of our events without a BID. Most notably we created the first Tamale Festival in the OC and it is now thriving on its 28th year attracting up to 20,000 attendees. Like all cities we face the economic trends of financial great times as well as challenging times of financial instability all while trying to sustain a safe, vibrant and stable community.

For many years now I have frequently visited, shopped and dined in your downtown business area and have gotten to know many of your stakeholders quite well. I love the vibe and great energy in your downtown and the diversity of businesses that have been developed throughout the years. I can remember when the City initiated the BID with Ms. Vicki Baxter as the Executive Director and that was a perfect time and decision to institute such a program for that era. Today's business climate is different, currently most businesses are suffering from inflation, a shortage of staff and the prospect of an economic downturn. Santa Ana downtown businesses have gone through tremendous financial challenges, first, for almost two and a half years a worldwide pandemic, secondly, the construction perils and shutdown of 4th Street and most recently the fire to the buildings on 4th Street that have been catastrophic to the small independent businesses and property owners. Additionally, Santa Ana has the highest City tax in the county curtailing prospective buyers of large ticket items.

For these reasons I write to you in support of the dissolution of the BID program. One more tax increment to these businesses could put them in the brink of jeopardy.

I am lucky enough to personally know many of your business owners who are committed and passionate about Santa Ana and who have the experience, knowledge and know-how to continue to make Santa Ana thrive without another tax. Please consider the decision to help them during this critical time and not to burden them with self-taxation.

I thank you and appreciate the opportunity of allowing me to express my views and concerns regarding your business community investments and livelihoods.

Sincerely,

Rosalina Davis, President  
Placita Santa Fe Merchants Association  
And  
Tlaquepaque Restaurant



**Middleton, Samuel**

---

**From:** Maria Ceja <ceja.maria95@gmail.com>  
**Sent:** Tuesday, November 15, 2022 10:54 AM  
**To:** eComment  
**Subject:** item 26

Dear Mayor and City Council,

I am in support of dissolving the Downtown Business Improvement District (BID) and conducting outreach that centers the most marginalized and impacted downtown businesses that consider a community-based model for the future of our downtown. The reality is that the BID failed to reflect the needs and culture of our community. It's time to bring Santa Ana's culture back that prioritizes all residents.

Best,  
Maria Ceja

City Manager, Council and Mayor  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

Dear City of Santa Ana Staff and Elected Officials,

**RE: SUPPORT FOR THE DOWNTOWN SANTA ANA BUSINESS IMPROVEMENT  
DISTRICT**

*THIS LETTER SUPPORTS AGENDA ITEM 26 (OPTION #2)*

I am a Downtown Inc boardmember and downtown stakeholder and I feel the BID is critical to my neighborhood's success.

I believe that ending the BID would cause critical change to the downtown and can foresee that vandalism, graffiti would increase and become problem again because of the lack of programming, advocacy and oversight by the BID.

I ask that you approve moving the levy forward for a public hearing on December 6th where a majority of businesses will support the continuance of the BID (option #2 before you).

Please refer to our organization's end of year report submitted by our board president, Ryan Chase, which details our many accomplishments this year.

Thank you,  
Vanessa Pozzobon  
Mission Bar

**Orozco, Norma**

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**From:** Eric Hansen <rjl106@aol.com>  
**Sent:** Tuesday, November 15, 2022 1:56 PM  
**To:** eComment  
**Subject:** DTSA BID

I will not be able to attend the meeting tonight and to speak, so I am writing about item #26 on the agenda, regarding the BID in DTSA.

We do not believe that it serves us as it has in the past and we would like to see the assessment removed completely.

Thank you

**Orozco, Norma**

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**From:** Maria Haro <mariaharoboutique@gmail.com>  
**Sent:** Tuesday, November 15, 2022 2:28 PM  
**To:** eComment  
**Subject:** NO MORE BID FOR US

I WANT THE BID TO BE CANCELED BECAUSE IT HAS NOT BENEFITED ME IN MY BUSINESS. THEY HOLD EVENTS AND BRING PEOPLE FROM OUTSIDE WHO DO NOT PAY RENT OR TAXES OR LICENSES AND TAKE THE PROFITS IN CASH. NEITHER THE CITY NOR THE ASSOCIATIONS ASK US FOR AN OPINION, THEY DO NOT ADVERTISE OUR BUSINESSES. THE ASSOCIATIONS ONLY PAINT, CLEAN AND TAKE CARE OF SOME AREAS WHERE THEY HAVE THEIR OWN BUSINESSES, NEGLECTING THE AREAS WHERE THERE ARE MORE LATIN BUSINESSES, HAVING THEFT, VANDALISM, GRAFFITI, I DON'T WANT THEM TO IMPOSE A CHARGE THAT DOESN'T WORK FOR ME. I HAVE THE RIGHT TO BE ASKED AND RESPECTED IN MY WORKPLACE. WE ARE WORKING PEOPLE. WE ARE NOT ASKING FOR ALMS, WE ARE GENERATING INCOME FOR THE COUNTRY WITH OUR WORK. IF THE CITY, OCTA AND THE ASSOCIATIONS DID THEIR JOB RIGHT... MY BUSINESS WOULD NOT HAVE BEEN BURNED AND 3 MORE WOULD NOT HAVE BEEN DAMAGED OR 16 JOBS WOULD HAVE BEEN LOST. TO THIS DAY NO ONE HAS ASKED US IF WE ARE DOING WELL OR IF WE NEED ANYTHING, OR HOW WE WILL RECOVER FROM OUR LOSSES. NO CALLS, NO EMAILS, NOTHING. THEY DON'T CARE ABOUT US. BECAUSE OF THIS, NO MORE BID.

**Orozco, Norma**

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**From:** Jeff Jensen <jj@chapteronetml.com>  
**Sent:** Tuesday, November 15, 2022 2:47 PM  
**To:** eComment  
**Subject:** B.I.D.

Good Evening Mayor, City Council and Staff,

My name is Jeffrey Jensen (JJ) and I am the owner of Chapter One in beautiful Downtown Santa Ana. I live and work in Downtown and love this city!!!!

I am in favor of the B.I.D., but I feel that there should only be one group associated with it. Currently there are 2 groups, SABC & Downtown Inc. I am in favor of combining the 2 groups together or creating a new group to have just one group. This would help to simplify and streamline a lot of processes.

One B.I.D.  
One Downtown  
One Vision  
One Voice

Thank you,

JJ

***Jeffrey Jensen***  
*Chapter One: the modern local*  
227 N. Broadway  
Downtown Santa Ana, CA 92701  
(714) 352-2225 MAIN  
[www.chapteronetml.com](http://www.chapteronetml.com)

## Orozco, Norma

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**From:** Alta Baja Market <altabajamarket@gmail.com>  
**Sent:** Tuesday, November 15, 2022 2:58 PM  
**To:** eComment  
**Subject:** comment for item #26 (Delilah Snell)

Good afternoon-

The 2 association model currently in downtown is wasteful of our money, time and very few receive benefits from the current work of the associations. I completely understand why so many businesses in the BID are upset or many do not even know what they are paying or why. And many businesses in the BID still are not aware of what is happening.

Is cancelling the BID the right thing to do? I think that after a disastrous 3 years, Santa Ana merchants need the relief...especially from something they receive little benefit from.

While I do like parts of the proposal regarding a single association, having it made up of 2/3 of the old boards does not seem like a change. It is more of the same, same people doing the same thing as before.

And if there is a single board, why do businesses have to pay for it? Is there a way to have a city funded consultant (funded from the business license fee) who will work for the association/downtown merchant group and this person can raise funds/create partnerships for events and marketing. We should be discussing ideas like this and other ways that do not put added stress on small businesses that have already had to struggle over the past 3 years.

This problem cannot be solved in a single meeting. This issue needs time and to me, it needs 6months to 1 year for real work. Time to create a NEW association, build a funding plan that does not depend on businesses that are already burdened. Create a strategic 5-year plan and properly survey the entire area and educate owners and ask them their needs. Use the time to evaluate spending, set up systems of better communication and to make downtown Santa Ana a place where businesses feel supported, heard and allowed to thrive. More of the same is not going to work, it hasn't so far.

Thank you for your time.

- Delilah Snell

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¡Salud!

### **Alta Baja Market**

*Market + cafe celebrating the flavors above and below the US//MX border*

Order our book: [\*Beginner's Guide to Preserving\*](#)

201 E. 4th St, ste 101

Santa Ana, CA 92701

714.783.2252 (BAJA)

@altabajamarket



## Orozco, Norma

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**From:** LARRY BURDICK <larryburdick38@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 2:51 PM  
**To:** eComment  
**Subject:** Vote on BID

Good Afternoon,

My hope is not to dismantle the BID. We are in desperate need of assistance in DTSA from years of loss from covid. Then when we feel safe reopening our shop to bring our customers back to 4th street market, along comes OCTA tearing up 4th st.. Now we are told from Feb. 2nd to Aug 13 we have no on street parking. We lost access to loading and unloading, customers can not even park to come in.

And then they can not make that happen. To our west, the bank building project with pounding and noise, much less the mess with traffic trying to find safe ways around the market is a constant problem. I feel we have been dumped on and neglected by a lot of officials and contractors that are supposed to know more than they have shown to businesses in Santa Ana.

What needs to happen now is for all parties, to pull together for the benefit of customers. We need to share the new look and excitement with energy that we should get.

PLEASE DO NOT BAIL OUT NOW, RENEW THE BID,

Best regards,  
Larry Burdick  
Chunk n Chip,  
4th St Market

## Orozco, Norma

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**From:** timrush@bhhscaprops.com  
**Sent:** Tuesday, November 15, 2022 3:14 PM  
**To:** eComment  
**Subject:** DTSA BID issue on 11/15/22 Council Agenda

Dear Mr. Mayor & Councilmembers;

There is no question that our DTSA has been the victim of terrible planning and construction execution on behalf of OCTA during the building of our new Trolley. However to throw out our BID is in my view a huge mistake. Given what it does and how downtowns work.....our downtown NEEDS a BID. May I offer a suggestion? Why not have OCTA pick up the cost of one half of the bid cost until the project is finalized? I think this offers a compromise that would keep this valuable resource alive. Lets not throw the baby out with the bathwater.....only to spend a great deal of time and money several years from now to recreate.

Thanks for your consideration.

Tim Rush, Wilshire Square

Chief People Connector  
Berkshire Hathaway HomeServices California Properties  
The Maple Building, Corporate Offices  
16911 South Bellflower Boulevard  
Bellflower, CA 90706-5903  
(714) 299-4455  
17 Branch Sales Offices, Serving 6 Southern California Counties



