



Office of the City Manager

ACTION CALENDAR
September 11, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Michael Caplan, Acting Manager, Economic Development

Subject: Establishment of Community Benefit Districts

RECOMMENDATION

Adopt first reading of an Ordinance Amending Chapter 7.94 of the Berkeley Municipal Code Relating to Improvement District Assessments (Community Benefit Districts).

FISCAL IMPACTS OF RECOMMENDATION

Some Economic Development staff support will be necessary for all new Community Benefit Districts (CBDs) that may be established. This legislation will enable commercial districts to generate resources to supplement existing City services.

CURRENT SITUATION AND ITS EFFECTS

There is a current effort underway to organize a CBD in Southwest Berkeley led by the West Berkeley Business Alliance. They would prefer to organize as a CBD rather than as a traditional BID because of the existing mixed-use nature of the district. The focus of their management plan would be on enhanced security, graffiti abatement/ beautification and provision of a daily BART shuttle service to neighborhood employees and residents. Their goal is to finalize approval of their CBD by the end of the calendar year and begin enhanced services early in 2008.

This Ordinance amendment would modify some features of property-based assessments, making them easier to manage and finance, enhancing the ability of the residents and businesses to establish them, and limiting the ability of a single large property owners from determining the outcome of a formation vote. It does these things in the following ways:

1. It will extend the period for which a property based CBD may exist from ten years to 20 years which will reduce expensive consulting costs associated with renewal along with the need for City staffing support in that process.
2. It will authorize the inclusion of residential and mixed-use properties in property-based districts (hence the name "CBD " versus the traditional "BID") creating a broader constituency for special services.
3. It will limit the ability of a single large property owner from determining the outcome of an organizing petition by limiting their voting weight to no more than 20 percent of the amount of all assessments proposed to be levied.

4. It authorizes the reimbursement of formation costs by the CBD to those parties who have contributed up-front funding through proceeds of the CBD.

BACKGROUND

The City of Berkeley currently has 5 BIDs where businesses and/or property-owners have instituted self-assessments to provide needed services. These BIDs are located in Downtown, Telegraph, North Shattuck, Solano and Elmwood commercial districts. Just as these districts vary and have distinct needs and issues, these BIDs vary in terms of how they are structured and what they are designed to do. For example, Downtown and Solano Avenue are business-license based (formed under the Parking and Business Improvement Area Law of 1989), while Telegraph and North Shattuck are property based (formed under the California Property and Business Improvement District Law of 1994). Elmwood was structured under a different assessment law altogether (created under a unique local adaptation of the 1989 State law). And while Downtown has been historically focused mostly on marketing, promotion and district identity, Telegraph has spent the bulk of its budget on direct services such as cleanliness and sidewalk beautification. The Elmwood's unique enabling ordinance was structured to help pay for restoration and reopening of their historic theater, an action that has helped lead to a substantial improvement to the health of small businesses in that area.

This ordinance amendment will establish CBD's as a way for the traditional BID concept to be more relevant to mixed-use districts where residential ownership housing is interspersed with commercial uses. CBDs allow homeowners/condo owners to participate and benefit as stakeholders in the districts where they live. It has particular applicability to West Berkeley, which has a number of longstanding mixed-use neighborhoods, and potentially to the Downtown that has a number of recently approved condo developments.

RATIONALE FOR RECOMMENDATION

An amendment to Berkeley's BID enabling ordinance is needed to broaden the range of options available to mixed-use commercial districts interested in paying for special benefits and reduce staff costs associated with assessment district reauthorization.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

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Attachments:

1: Ordinance

ORDINANCE NO. –N.S.

AMENDING CHAPTER 7.94 OF THE BERKELEY MUNICIPAL CODE RELATING TO IMPROVEMENT DISTRICT ASSESSMENTS (COMMUNITY BENEFIT DISTRICTS)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 7.94 is renamed as follows:

Chapter 7.94 ~~PROPERTY AND BUSINESS~~ COMMUNITY BENEFIT IMPROVEMENT DISTRICTS

Section 2. That Berkeley Municipal Code Section 7.94.010 is hereby amended to read as follows:

Section 7.94.010 Purpose.

The purpose of this chapter is to enhance the ability of the City and residents and businesses therein to establish community benefit business improvement districts pursuant to the Property and Business Improvement District Law of 1994 (Streets & Highways Code Section 36600 *et seq.*) by: (1) reducing the percentage of property owners whose signatures are required to initiate formation of a Community Benefit Property Business Improvement District (“Property BID”) from 50%, ~~as authorized by the Property and Business Improvement District Law of 1994, to 30%~~; and (2) extending the period for which a Property BID may exist from ten five years, ~~as authorized by the Property and Business Improvement District Law of 1994, to ten years~~; (3) authorizing the inclusion of residential and mixed-use properties in such districts; and (4) authorizing the reimbursement of formation costs. (Ord. 6616–NS § 1, 2001)

Section 3. That Berkeley Municipal Code Section 7.94.020 is hereby amended to read as follows:

Section 7.94.020 Alternative procedures.

A.—The procedures established in this chapter shall be additional or alternative to any other procedure established by ordinance or state law, and are intended to supplement those procedures. (Ord. 6616–NS § 1, 2001)

B. In forming assessment districts to fund activities and improvements that confer special benefit on property, the City Council may elect to use the procedures set forth in the Property and Business Improvement District Law of 1994 (Streets & Highways Code §§ 36600 *et seq.* (the “PBID Law”) as modified by this chapter. The City Council shall be bound by, and comply with, applicable state law governing the establishment and operation of property and business improvement districts in all respects not inconsistent with this chapter.

C. –An assessment district established pursuant to this chapter shall be denominated a “Community Benefit District” or “District” and the assessment levied in connection with such a district shall be denominated a “Community Benefit Assessment.”

D. –Except where otherwise provided in this chapter, “Community Benefit District” shall have the meaning given to “Property and Business Improvement District” by Section 36611 of the PBID Law and each reference in the PBID Law to a “Property and Business Improvement District” or a “District” shall be deemed also a reference to a “Community Benefit District.”

E. –Except where otherwise provided in this chapter, “Community Benefit Assessment” shall have the meaning given to “Assessment” by Section 36606 of the PBID Law and each reference in the PBID Law to an “Assessment” shall be deemed also a reference to a “Community Benefit District.”

Section 4. That Berkeley Municipal Code Section 7.94.030 is hereby amended to read as follows:

Section 7.94.030 Petition requirement.

Upon the written petition, signed and acknowledged, of the property owners in the proposed Property BID district who will pay more than thirty (30) percent of the assessments proposed to be levied, the City Council may initiate proceedings to form a Property BID by adopting a resolution expressing its intention to form a Property BID. The amount of assessment attributable to property owned by the same property owner which is in excess of 20% of the amount of all assessments proposed to be levied shall not be included in determining whether the petition is signed by property owners who will pay more than 30% of the total amount of assessments proposed to be levied. (Ord. 6616–NS § 1, 2001)

Section 5. That Berkeley Municipal Code Section 7.94.040 is hereby amended to read as follows:

Section 7.94.040 Duration of Property BID

A Property BID established pursuant to this chapter may have a duration of up to ~~ten~~ twenty (~~10~~20) years, if so specified in the resolution of intention. (Ord. 6616–NS § 1, 2001)

Section 6. That Berkeley Municipal Code Section 7.94.050 is hereby added to read as follows:

Section 7.94.050 Benefit to residential and mixed-use property

Notwithstanding Streets and Highways Code section 36632(c), property zoned for mixed uses that include residential uses, as well as property zoned solely for residential use, may be subject to an assessment under this chapter if it is benefited.

Section 7. That Berkeley Municipal Code Section 7.94.060 is hereby ~~added~~amended to read as follows:

Section 7.94.060 Reimbursement of formation costs – Advance for first year

A. —The City Council may authorize a District formed pursuant to this chapter to recover through assessments the costs incurred in forming the District, including:

1. The costs of preparation of the management plan and engineer's report required by state law;

2. The cost of circulating and submitting the petition to the City Council seeking establishment of the District;

3. The costs of printing, advertising and the giving of published, posted or mailed notices;

4. Compensation of any engineer or attorney employed to render services in proceedings under this chapter or the PBID Law; and

5. Costs associated with any ballot proceedings required by law for approval of a new or increased assessment.

If the District will be authorized to recover these costs, the management plan required pursuant to Streets & Highways Code Section 36622 shall specify the formation costs eligible for recovery through assessments, the schedule for recovery of those costs, and the basis for determining the amount of the additional assessment for recovery of costs, including the maximum amount of the additional assessment, expressed either as a dollar amount, or as a percentage of the underlying assessment.

B. —The City may advance funds for the first year of a District so that the District can commence work prior to the initial collection of the assessments. The funds advanced will not exceed the total assessment for the first year. The funds advanced shall be repaid, with interest, within five (5) years of the collection of the first annual assessment.

Section 8. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

