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OAKLAND

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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** SUPPLEMENTAL – Property BID  
Annual Reports and Assessment  
Payment Approval

**DATE:** July 8, 2019

City Administrator Approval

Date:

7/11/19

## RECOMMENDATION

**Staff Recommends That The City Council And The Oakland Redevelopment Successor Agency (ORSA) Adopt The Following Legislation:**

- 1) The City Council Adopt A Resolution (A) Approving The Fiscal Year 2018-19 Annual Reports Of The Fruitvale Property Business Improvement District Of 2011, The Lakeshore/Lake Park Business Improvement Management District Of 2012, The Jack London Improvement District, The Temescal/ Telegraph Business Improvement District 2015, The Laurel Business Improvement District 2016, And The Koreatown/Northgate Community Benefit District 2017 Advisory Boards; (B) Confirming The Continuing Annual Assessment For Each Said District For Fiscal Year 2019-20; And (C) Authorizing Payment Of The City's Cumulative Fiscal Year 2019-20 Fair Share Assessment In An Approximate Amount Of \$284,441.38 For City-Owned Properties In The Fruitvale District, The Jack London District, The Temescal District, The Koreatown District 2017, The Downtown Oakland Community Benefit District 2018, And The Lake Merritt-Uptown Community Benefit District 2018; And**
- 2) The Oakland Redevelopment Successor Agency (ORSA) Governing Body Adopt a Resolution Authorizing Payment Of ORSA's Cumulative Fiscal Year 2019-20 Fair Share Assessment In An Approximate Amount Of \$4,565.49 For Three Oakland Redevelopment Successor Agency-Owned Properties In The Koreatown/Northgate Community Benefit District 2017, The Downtown Oakland Community Benefit District 2018, And The Lake Merritt-Uptown Community Benefit District 2018.**

## REASON FOR SUPPLEMENTAL

On June 25, 2019 the Community and Economic Development Committee requested that staff provide a supplemental agenda report to set forth the standard process by which a business improvement district may request an increase to its annual assessment rate and to discuss whether requests for Fiscal Year (FY) 2019-2020 assessment rate increases of 5 percent

Item: \_\_\_\_\_  
City Council  
July 16, 2019

respectively by the Downtown Oakland Community Benefit District 2018 and the Lake Merritt-Uptown Community Benefit District 2018 (CBDs) made outside the City's standard process can be accommodated.

To address the above requests City staff researched and reviewed the following BID special assessment district governing legislation: 1) the City of Oakland Business Improvement Management District Ordinance (as codified in Oakland Municipal Code Chapter 4.48); 2) the Property and Business Improvement District Law of 1994 (California Streets and Highways Code Section 36600 *et al*); 3) City Council adopted CBD Management Plans on file in the Office of the City Clerk and; 4) respective Disbursement Agreements between the City of Oakland and the Downtown Oakland Community Benefit District 2018 and the Lake Merritt-Uptown Community Benefit District 2018.

The standard process for requesting assessment rate increases has been through near year-end annual district reporting and, historically, the City has been supportive, if all procedural requirements have been met and justification provided. In the case of the Downtown Oakland and Lake Merritt-Uptown Community Benefit Districts, both were re-authorized by City Council in July 2018 with an operation start date of January 1, 2019; therefore, respective annual reports for 2019 operations are not due until September 2019, which is normally when the CBDs would typically be allowed to request initial assessment rate increases.

The City plays an important role as the regulating authority and has fiscal oversight over special assessment business improvement districts (also known as community benefit districts), including the levying of related special assessments through the Alameda County Assessor's Office.

**City Standard procedure for requesting BID assessment rate increases:**

Since 1999, when the City's Business Improvement District Assistance Program was first formed, the method by which Oakland business improvement districts (BIDs) have been allowed to request assessment rate increases is by including such requests in comprehensive near year-end Annual Reports. The reason for using near year-end reports is to increase the integrity and accuracy of revenue and expense data used to justify assessment rate increases upon all affected property owners. In this way, the City protects ratepayers from undue financial burdens that could result from premature or overly aggressive rate increases based upon mid-year projections which may later prove inaccurate. Most BID Management Plans provide no mechanism to roll back rate increases after the fact; therefore, it's critical that any City-approved increases be based upon accurate and substantiated near year-end data. This approach supports the City's fiscal responsibility to all affected property owners in designated BID special assessment districts. In addition, Annual Reports also provide the comprehensive overview of district activities required to conduct a thorough and responsible analysis of the merits of any district's request for assessment rate increases.

Listed below is information required in a district's Annual Report pursuant to the City of Oakland Business Improvement Management District Ordinance (as codified in Oakland Municipal Code 4.48.200) with the addition of Item 2 which is at the City's discretion:

Item: \_\_\_\_\_  
City Council  
July 16, 2019

1. Any proposed changes in the boundaries of the BID or in any benefit zones with the district;
2. A description of improvements and activities completed and paid for by the BID's prior fiscal year funding;
3. A description of improvements and activities to be provided and paid for by the BID's upcoming fiscal year funding;
4. An estimate of the cost of providing upcoming year improvements and activities;
5. The method and basis of levying the assessment in sufficient detail to allow each property owner to estimate the amount of the assessment to be levied against his or her property in the upcoming fiscal year, including any proposed assessment rate increases;
6. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year;
7. The amount of any contributions to be made from sources other than BID assessments which includes any amounts required for a district to finance its general benefit services. General benefits are "spillover" benefits that accrue to persons other than ratepayers (for example, visitors to the district) and, therefore, cannot be levied against ratepayers. The dollar amount of general benefit services is unique to each BID and determined by its assessment engineer during the district formation process.

Based on the above information prescribed by City ordinance, staff obtains a comprehensive overview of each BID, its current year completed activities and actual use of funds disbursed, and the amount of estimated year-end surplus and deficits for the current year—all critical factors in determining the merit of any request for future assessment rate increases before providing recommendations to City Council.

**Analysis of requests from Downtown and Lake Merritt CBD for FY 2019-2020 assessment rate increases:**

The Downtown Oakland and Lake Merritt CBD management team's request to allow a special assessment levy increase not associated with a near year-end report required detailed review and analysis of the following BID governing legislation: 1) the City of Oakland Business Improvement Management District Ordinance (as codified in Oakland Municipal Code Chapter 4.48); 2) the Property and Business Improvement District Law of 1994 (California State Highways Code Section 36600 *et al*); 3) City Council adopted CBD Management Plans on file in the Office of the City Clerk and; 4) respective Disbursement Agreements between the City of Oakland and the Downtown Oakland Community Benefit District 2018 and the Lake Merritt-Uptown Community Benefit District 2018.

Through this research and analysis four key areas of concern have been identified:

1. **Assessment rate increases are prohibited prior to FY 2020-2021 per Section 4.9.1 of the Disbursement Agreements between the City and the CBDs.** Section 4.9.1 of the Downtown and Lake Merritt Disbursement Agreements executed by the parties in December 2018 state, in pertinent part, that "The District's next annual report and budget shall be submitted on or before September 1, 2019. Any proposed changes to the assessments, including allowable percentage increases, if any, shall not be implemented until the following fiscal year". Therefore, these agreements clearly

Item: \_\_\_\_\_  
City Council  
July 16, 2019

contemplate that any rate increase will be requested in the September 1, 2019 Annual Report and explicitly prohibit implementation of any rate increases before FY 2020-2021.

2. **The CBDs have not complied with public noticing requirement set forth in Section 4.12.4 of the Disbursement Agreements between the City and the CBDs.** Neither CBD appears to have satisfied public noticing requirements outlined in section 4.12.4 of the Disbursement Agreements between the City and the CBDs which requires that districts notify all affected property owners in writing of any proposed rate increase prior to submitting a request for a rate increase to the City. Collectively, property owners of approximately 1,351 parcels located in both districts would need to have been notified to satisfy this requirement. City staff has not been provided evidence that the required property owner noticing has occurred. When requested, the CBDs have been unable to provide proof of having satisfied the above noticing requirement to all property owners. It is, therefore, possible that not all affected property owners are aware that an increased assessment rate is under discussion. The CBDs have only produced a handful of letters from select property owners supporting rate increases.
3. **Rate increase requests submitted prior to submission of the first Annual Report are not contemplated the BID Program because such requests lack critical near year-end data, including near year-end surplus/deficit information needed to adequately justify future rate increases.** As described above, requests for assessment rate increases typically occur by means of a district's near year-end comprehensive Annual Report. Given the recently renewed Downtown Oakland and Lake Merritt CBD first Annual Reports are not due until September 2019, the current requests are premature and outside the bounds of any established City standard operations. As such, information received by City staff before September 2019 would be incomplete and falls short of standard required information.
4. **Current year service delivery requirements have not yet been satisfied.** Typically, BIDs are not approved for future rate increases before demonstrating that they have fully satisfied current year service delivery obligations. Because the recently renewed Downtown and Lake Merritt CBDs districts are only six months into Year 1 operations they are unable to provide verification of having satisfied Year 1 obligations, or, to fully account for eligible use of FY 2018-2019 assessment funds already received this year, and, therefore, unable to meet the City's customary prerequisite for considering future year assessment rate increases.

As mentioned above, the City plays an important role as the regulating authority and has fiscal oversight over business improvement districts. The procedural requirements within the City's BID Disbursement Agreements are in place to provide transparency for all property owners subject to BID special assessments. Historically, the City has been supportive of rate increases if all procedural requirements have been met and justification provided. Given the above, staff finds the requests for assessment rate increases from the Downtown Oakland and Lake Merritt-Uptown CBDs for FY 2019-2020 outside of an annual near year-end report to be premature and not fully substantiated and specifically in conflict with terms outlined in the CBDs' Disbursement Agreements with the City of Oakland. For this reason, staff recommends against approving the requested increases for FY 2019-2020.

Item: \_\_\_\_\_  
City Council  
July 16, 2019

Going forward, staff will work with BID managers to further clarify rate increase language within district management plans and Disbursement Agreements and to ensure continued transparency for all affected property owners within BID special assessments districts.

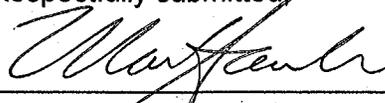
**ACTION REQUESTED OF THE CITY COUNCIL**

**Staff Recommends That The City Council And The Oakland Redevelopment Successor Agency (ORSA) Adopt The Following Legislation:**

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For questions regarding this report, please contact Maria Rocha, BID Program Manager, at 510-238-6176.

Respectfully submitted,



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Item: \_\_\_\_\_  
City Council  
July 16, 2019