



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 JUN 11 AM 9:16

AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Mark Sawicki

SUBJECT: Amendments to Business Improvement
Management District Ordinance

DATE: June 1, 2015

City Administrator
Approval

Date 6/10/15

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Staff recommends that the City Council adopt an:

Ordinance Amending Chapter 4.48 Of The Oakland Municipal Code (1) To Allow The City To Enter Into Contracts Exceeding One Year With Nonprofit Corporations To Administer Business Improvement Management Districts (BIMD), (2) To Clarify That More Than 30 Percent Of Affected Properties Must Petition For The Formation Of A New BIMD, (3) To Change The Official Responsible For Administering BIMDs From The City Clerk To The City Administrator, And (4) To Allow A Summary Of The Management District Plan To Be Attached To Petitions To Form BIMDs

OUTCOME

Adoption of proposed amendments to the City of Oakland Business Improvement Management District Ordinance (BIMD Ordinance) would provide key clarifications needed to form and operate Oakland's business improvement districts in a more efficient and cost effective manner.

Key proposed amendments include:

1. Permitting business improvement management districts (BIMD) to enter into multi-year written agreements with the City, granting long-term rights to future BIMD revenues that --in the case of some districts--could serve as collateral for private bank loans to finance related capital improvements, such as installation of pedestrian lighting. Currently, the BIMD Ordinance only allows for short-term, single year agreements, which is insufficient for bank underwriting purposes;

Item: _____
CED Committee
June 23, 2015

2. Clarification that more than thirty percent (more than 30%) of affected properties must petition for the formation of a new BIMD. Currently, Oakland Municipal Code section 4.48.050.A and 4.48.100 inconsistently state what percent (“at least 30 percent” or “more than 30 percent”) of weighted petitions in support are required to initiate the process of bringing the creation of a new BIMD before the City Council for consideration;
3. Changing responsibility for administering BIMDs from the Office of the City Clerk to the City Administrator’s Office consistent with actual current and past practice; and
4. Permitting a summary (versus a full copy) of a proposed Management District Plan to be attached to petitions for the formation of a new BIMD, consistent with what is allowed under the State’s property and business improvement district law (Streets and Highways Code section 36621).

EXECUTIVE SUMMARY

The City of Oakland Business Improvement Management District (BIMD) Ordinance was originally adopted by City Council in late 1999. In light of information and evaluation gathered since its initial adoption, the ordinance is in need of revision. Such revisions would provide additional clarification and flexibility needed to streamline proposed district formations and administration of existing business improvement districts, and to achieve consistency with recent updates to related State legislation.

A description of the proposed amendments is listed above.

BACKGROUND/LEGISLATIVE HISTORY

In 1999, the City Council approved the City of Oakland Business Improvement Management District Ordinance (Ord. No. 12190 of 1999 codified as Chapter 4.48 of the Oakland Municipal Code), which allows for the formation of property-based special assessment districts to undertake a range of special benefit services within the assessment area, independent from government, to support the economic viability of affected commercial neighborhoods.

In 1999, the Oakland City Council also authorized initiation of a Neighborhood Business Improvement District Program (Resolution No. 75323 C.M.S.) to further assist business and property owners to form such districts.

Since 1999, Oakland has had success with the BID Program through the formation of fourteen (14) business improvement districts (BIDs) and community benefit districts (CBDs). These include:

Item: _____
CED Committee
June 23, 2015

- Lakeshore BID (formed in 2002, renewed in 2012);
- Rockridge BID (formed in 2000);
- Fruitvale BID (formed in 2001, renewed in 2006 and 2011);
- Montclair BID (formed in 2001);
- Temescal/Telegraph BID (formed in 2004, renewed in 2014);
- Laurel BID (formed in 2005);
- Koreatown/Northgate Community Benefit District (CBD) (formed in 2007);
- Downtown Oakland CBD (formed in 2008);
- Lake Merritt/Uptown CBD (formed in 2008); and,
- Jack London Improvement District (formed in 2013).

Collectively, Oakland's ten (10) existing business and property-based BIDs/CBDs¹ generate a total of approximately \$4.4 million per year to pay for special services (e.g. cleaning, private security, and marketing), which aim to proportionally benefit assessed business and property owners. Such special benefit services also enhance the overall economic development climate of affected commercial neighborhoods.

ANALYSIS

Proposed amendments to the BIMD ordinance provide the clarification and flexibility needed to form and administer business improvement districts more efficiently. The proposed amendments also provide greater consistency with sections of related State legislation (California Streets and Highways Code Section 36600 *et seq* (Property and Business Improvement District Law of 1994).

Adoption of the proposed amendments will have no fiscal impact to the City's general fund; however, improved efficiency resulting from their adoption could contribute to a more cost effective use of existing City staff resources.

PUBLIC OUTREACH/INTEREST

Adoption of the proposed BIMD ordinance amendments does not require City staff to conduct public outreach other than the required posting of related City Council meetings by the Office of the City Clerk.

¹ BIDs and CBDs are legally and operationally identical. Whether a district is named a "BID" or a "CBD" is based solely on the personal preference of each district's property owner group.

COORDINATION

The Office of the City Attorney was consulted in the preparation of this report and/or its attachments and exhibits.

COST SUMMARY/IMPLICATIONS

Adoption of the proposed amendments to the City's BIMD Ordinance will have no fiscal impact to the City's general fund; however, improved efficiency resulting from their adoption could contribute to a more effective use of existing City resources.

SUSTAINABLE OPPORTUNITIES

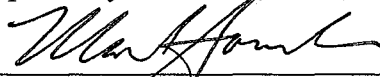
Economic: Formation of business improvement districts is intended to support the eventual increase of property, sales, and business tax revenues, as well as increased job opportunities within affected commercial districts.

Environmental: Business improvement districts strengthen and beautify the physical image of affected commercial neighborhoods by providing special benefit services including, but not limited to, enhanced sidewalk cleaning, graffiti removal, and trash removal.

Social Equity: Formation of business improvement districts will incorporate members of affected commercial neighborhoods into a productive and proactive entity representing the interests of that community. Stakeholders themselves will be responsible for administering district revenues, which may contribute to community self-empowerment and social equity goals.

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

Respectfully submitted,



Mark Sawicki, Director
Economic and Workforce Development Department

Prepared by:
Maria Rocha, BID Program Manager

Item: _____
CED Committee
June 23, 2015

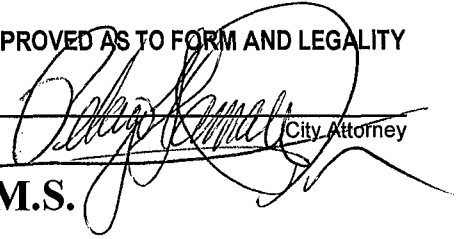
FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 JUN 11 AM 9:17

ORDINANCE No. _____

APPROVED AS TO FORM AND LEGALITY

C.M.S.


City Attorney

INTRODUCED BY _____

ORDINANCE AMENDING CHAPTER 4.48 OF THE OAKLAND MUNICIPAL CODE (1) TO ALLOW THE CITY TO ENTER INTO CONTRACTS EXCEEDING ONE YEAR WITH NONPROFIT CORPORATIONS TO ADMINISTER BUSINESS IMPROVEMENT MANAGEMENT DISTRICTS (BIMD), (2) TO CLARIFY THAT MORE THAN 30 PERCENT OF AFFECTED PROPERTIES MUST PETITION FOR THE FORMATION OF A NEW BIMD, (3) TO CHANGE THE OFFICIAL RESPONSIBLE FOR ADMINISTERING BIMDS FROM THE CITY CLERK TO THE CITY ADMINISTRATOR, AND (4) TO ALLOW A SUMMARY OF THE MANAGEMENT DISTRICT PLAN TO BE ATTACHED TO PETITIONS TO FORM BIMDS

WHEREAS, by Ordinance 12190 C.M.S., the City of Oakland enacted Municipal Code (OMC) Chapter 4.48, which provides for the formation of business improvement management districts (BIMD) to promote the health and quality of life of its residents and visitors; and

WHEREAS, section 4.48.160 allows for the City to enter into "annual" contracts with a nonprofit corporation designated by the property owners within a BIMD to administer the district; and

WHEREAS, lenders which may provide loans to BIMD's have hesitated to provide financing to BIMD's because their contracts with the City are limited to one-year duration, and longer term contracts would facilitate smoother operation of BIMDs; and

WHEREAS, BIMDs under OMC Chapter 4.48 are usually created for a duration of 10 years and the same nonprofit corporation is usually hired and renewed annually to administer the BIMD for the duration of the BIMD's maximum 10-year existence; and

WHEREAS, OMC Chapter 4.48 states that the City Clerk shall administer the BIMD program, while the City Administrator's office has in fact always administered the program for the City, and

WHEREAS, OMC section 4.48.050.A and 4.48.100 inconsistently state what percent ("at least 30 percent" or "more than 30 percent") of weighted petitions in support are required in order to initiate the process of bringing the creation of a new BIMD before the City Council for consideration; and

WHEREAS, attaching a full copy of the Management District Plan (MDP) to petitions to form or renew BIMDs is cumbersome and costly; and related state law allows for a summary of the MDP to be attached to petitions to form BIMDs, while making a full copy available for no cost; and

WHEREAS, the Oakland City Council desires to amend OMC Chapter 4.48 in order to rectify the issues identified above, now therefore

THE OAKLAND CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1 – The City Council does hereby find and declare that the above recitals are true and correct and hereby makes them part of this Ordinance.

Section 2 - Chapter 4.48 to Article 4 of the Oakland Municipal Code is amended to read as follows. Insertions are designated by underscoring text, and deletions are indicated by ~~strikethrough~~ text. Omitted text in Chapter 4.48 remains unchanged by this Ordinance:

4.48.050 Establishment.

- A. Upon the submission of written petitions, signed and acknowledged ~~by~~ of the property owners in the proposed 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 district by the adoption of a resolution expressing its intention to form a district.
- B. The petition of property owners required under subdivision A shall include ~~the Management District Plan~~ a summary of the Management District Plan. That summary shall include all of the following:
 - 1. A map showing the boundaries of the proposed district;
 - 2. Information specifying where the complete Management District Plan can be obtained at no cost;
 - 3. A list of all affected parcels showing the corresponding amount of the proposed assessments;
 - 4. A summary of the activities, improvements, and/or services that would be funded by the proposed assessment;
 - 5. The proposed duration of the proposed district;
 - 6. The amount of proposed annual assessment increases and any annual cap; and
 - 7. The proposed first-year budget to pay for proposed activities, improvements, and/or services that will be provided.

4.48.070 Procedures.

- A. The City Council shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement or the maintenance and operation expense of a public improvement or for the cost of the property service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Parcels within a district that are owned or used by any governmental agency, the state, or the United States shall not be exempt from assessment unless the City Council finds that it has been demonstrated, by clear and convincing evidence, that such publicly owned parcels in fact receive no special benefit.
- B. All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the state. The engineer's report may be incorporated in the management district plan.
- C. The amount of the proposed assessment for each identified parcel shall be calculated and the recorded owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of such payments, the reason for such assessment and the basis upon which the proposed assessment was calculated together with the date, time and location of a public hearing on the proposed assessment.
- D. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return and tabulation of the ballots required including a disclosure statement that the existence of a majority protest will result in the assessment not being imposed.
- E. Each such notice mailed to owners of identified parcels within the district shall contain a ballot which includes the agency's address for receipt of any such ballot once completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification or the parcel and support or opposition to the proposed assessment.
- F. The City Council shall conduct a public hearing upon the proposed assessment not less than forty-five (45) days after mailing the notice of the proposed assessment to record owners

of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The City Council shall not impose an assessment if there is a majority protest.

- G. A majority protests exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted in proportion to the assessment upon according to the proportional financial obligation of the affected property.

4.48.080 Resolution of intention--Contents.

Before the City Council can establish a BIMD pursuant to this chapter, the City Council shall pass a resolution declaring its intention to do so. Such resolution, in addition to all other matters it is herein required to contain, shall briefly describe the proposed improvements, state the period of time, which shall not exceed ten years, for which the proposed improvements are to be made, and contain a description of the district to be benefited thereby and to be assessed to pay the costs and expenses thereof. The resolution of intention shall further do all of the following:

- A. State that a BIMD is proposed to be established pursuant to this chapter and describe the boundaries of the proposed district and boundaries of each separate benefit zone to be established within the district. The boundaries may be described by reference to the map and description contained in the preliminary report of the City Clerk Administrator on file in the office of the City Clerk;
- B. State the name of the proposed district;
- C. State the type or types of improvements and activities proposed to be funded by the levy of assessments on property owners within the district, including any improvements to be acquired;
- D. State the amount of the proposed assessment for the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for such assessment and the basis upon which the proposed assessment was calculated;
- E. State the date, time and location of a public hearing on the proposed assessment;
- F. Include a ballot as described in Section 4.48.070.E F;
- G. State, in a conspicuous place, a summary of the procedures applicable to the completion, return and tabulation of the

ballots, including a disclosure statement that the existence of a majority protest will result in the assessment not being imposed;

- H. State that the public hearing the testimony of all interested persons for or against the establishment of the district, the boundaries of the district, or the furnishing of specified types of improvements or activities will be heard;
- I. Refer to the preliminary report of the City ~~Clerk~~ Administrator on file in the office of the City Clerk;
- J. State the manner of collection of the assessment.
(Ord. 12190 § 8, 1999)

4.48.090 Preliminary report of the City ~~Clerk~~ Administrator

Before the City Council can take any action on such resolution of intention, the City ~~Clerk~~ Administrator shall prepare and file a report in writing, proposing that the proceeding be commenced as requested in the petition, designating the plans and specifications of the proposed maintenance, improvements and activities for the proposed district and an estimate of the cost and expenses of said work for each year during which the proposed work will be done; including a certified engineer's report stating the district establishment is consistent with the provisions of Article XIII of the State Constitution in that each lot or parcel within said district to be assessed is being assessed in proportion to the estimated benefit to be received; and containing a diagram showing the boundaries of the proposed assessment district and each lot or parcel of land within said district proposed to be assessed. (Ord. 12190 § 9, 1999)

4.48 .100 Approval by the City Council.

Upon a demonstrated show of support, through petition, of at least more than thirty (30) percent of the weighted property owners who will pay into the proposed assessment district, the City ~~Clerk~~ Administrator will bring the issue of the proposed district to the City Council. (Ord. 12190 § 10, 1999)

4.48.120 Hearing of protests--Majority protest.

- A. At any time prior to the date set for hearing protests, any person affected by the proposed assessment may make a written protest stating his or her objections thereto. Such

protests must contain the information contained in the ballot mailed to the property owner in sufficient detail to allow the City Clerk and/or its designee to identify the owner, the parcel and the amount of the proposed assessment.

- B. At the time set for hearing protests, or any time to which the hearing may be continued, the City Council shall proceed to hear and pass up on all such protests. The City Council shall not impose an assessment if there is a majority protest as defined in section 4.48.120.B. ~~A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. The ballots shall be weighted in proportion to the assessment upon the affected property.~~ (Ord. 12190 § 12, 1999)

4.48. 140 Establishment of district and levying of assessment.

Not earlier than thirty (30) days after the adoption of the resolution of intention to establish the proposed district and if there is no majority protest as described in Section 4.48.120, and after effective date of the resolution of intention, the City Council shall adopt a resolution establishing the district, consistent with the resolution of intention. The adoption of the resolution establishing the district and levying the assessment, or if the district has been previously established, levying the new assessment, and recordation of the notice and map pursuant to Section 4.48 .130, shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan. This resolution shall contain all of the following:

- A. The management district plan;
- B. The number, date of adoption, and title of the resolution of intention;
- C. The time and place where the public hearing was held concerning the establishment of the district or the levying of a new assessment;
- D. A determination regarding any protests received;
- E. A statement that a BIMD has been established;
- F. A statement that the improvements and activities to be provided in the district will be funded by the levy of assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning the establishment of

- the district;
- G. A finding that the property within the BIMD will be benefited by the improvements and activities funded by the assessment to be levied. (Ord. 12190 § 14, 1999)

4.48.160 Administration.

The City ~~Clerk~~ Administrator and/or his/her designee shall administer the BIMD. The property owners at the time of balloting for the assessment ballot procedure shall determine whether they want the city to conduct or contract for some or all of the landscaping, security, programming or maintenance activities or improvements for the district or whether they want the city to contract with a designated nonprofit organization, comprised of the assesses themselves, to conduct the landscaping, security programming or maintenance activities or improvements. Any nonprofit corporation designated by the property owners shall enter into ~~an annual~~ a contract with the city which will set forth the responsibilities and contractual obligations of the parties. (Ord. 12190 § 16, 1999)

Section 3. – If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 4 – The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), including under section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 5 – If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

Section 6 – This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes as provided by Section 216 of the City Charter. Otherwise, this Ordinance shall become effective upon the seventh day after final adoption.

Section 7 – This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2015

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY,

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California

Date of Attestation:

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 4.48 OF THE OAKLAND MUNICIPAL CODE (1) TO ALLOW THE CITY TO ENTER INTO CONTRACTS EXCEEDING ONE YEAR WITH NONPROFIT CORPORATIONS TO ADMINISTER BUSINESS IMPROVEMENT MANAGEMENT DISTRICTS (BIMD), (2) TO CLARIFY THAT MORE THAN 30 PERCENT OF AFFECTED PROPERTIES MUST PETITION FOR THE FORMATION OF A NEW BIMD, (3) TO CHANGE THE OFFICIAL RESPONSIBLE FOR ADMINISTERING BIMDS FROM THE CITY CLERK TO THE CITY ADMINISTRATOR, AND (4) TO ALLOW A SUMMARY OF THE MANAGEMENT DISTRICT PLAN TO BE ATTACHED TO PETITIONS TO FORM BIMDS

This ordinance adds provisions to the Oakland Municipal Code Chapter 4.48 to allow the City to enter into contracts exceeding one-year with nonprofit corporation that administer business improvement management districts (BIMDs), to clarify that petitions from more than 30 percent of affected properties must petition for the formation of a new BIMD, changing the responsible City department to the City Administrator, and allowing a petition to form or renew a BIMD to include a summary of the Management District Plan.