

DATE: March 17, 2015

TO: Mayor and City Council

FROM: City Manager: Community & Media Relations Officer
City Attorney's Office

SUBJECT: Supplemental information regarding Community Benefits Districts

This report is informational only and requires no Council action. The intent of the report is to provide additional information and answers to Council and community questions on the formation process and purpose of Community Benefit Districts.

DISCUSSION

Upon introduction of an ordinance amending the Hayward Municipal Code by adding Article 20 to Chapter 8 relating to the formation of Community Benefits Districts (CBD) in the City of Hayward, a number of questions were raised about the nature of CBDs, their formation protocol, and the various requirements of the State's Property and Business Improvement District (PBID) law of 1994.

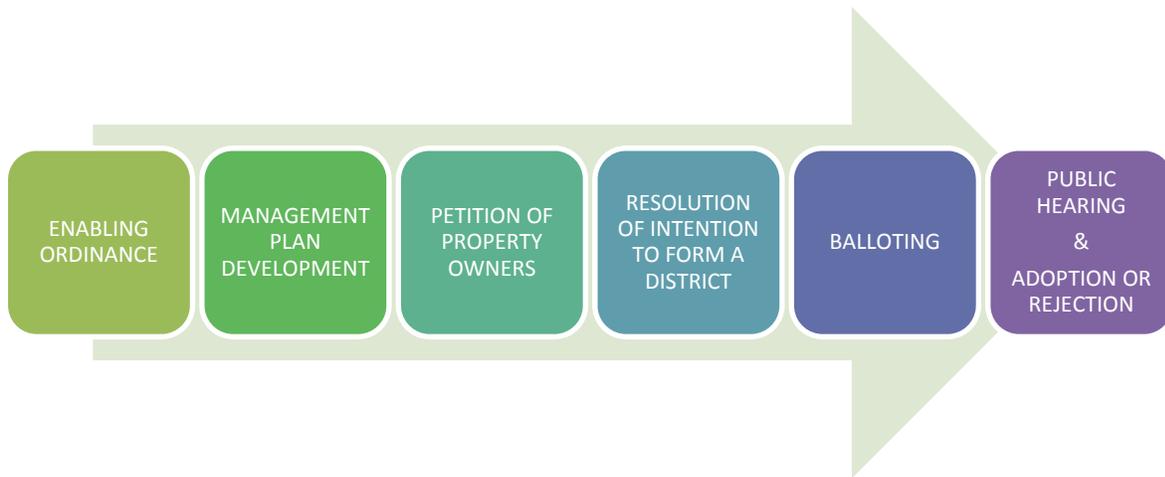
Formation Process (Refer to formation flow chart and table below)

After Council adopts the enabling Ordinance, and in order to initiate the district formation, a written petition will be required to move forward. The petition must be signed only by property owners in the proposed district. The petition signatures are weighted and counted based on the percent of the total assessment each property pays, and must demonstrate support from at least thirty percent of the assessments proposed to be levied.. The petition must include at least the specific management plan, which identifies the boundaries of the district; the specific parcels within the district; the proportional special benefit services to be provided to each parcel based upon the adoption of the Downtown Hayward Community Benefit District; benefit zones; and the amount of the special assessments to be levied The results of the petition will indicate the property owners' intial interest and support for creation of a special benefits district. Upon receipt of this written petition, the City Council may initiate the district formation process by adopting a "resolution of intention" expressing an intent to form the district. .

After the adoption of a resolution of intention, a subsequent public hearing in compliance with Prop. 218 must be held during which the City Council considers actual formation of the district, including the details contained in the management plan, the imposition of the special assessment on the identified properties, and any protests by the property owners.

Pursuant to the requirements of Prop. 218, at least forty-five days prior to the public hearing the City must mail ballots to all property owners within the proposed district so that they may cast votes in favor or against the creation of the district and imposition of the special assessment. The district can be formed only if 50% + 1 of the valid, returned mail ballots – weighted according to the percentage of each voter’s share of the total assessment – cast a ballot in favor of the district. If the balloting process results in a weighted majority in favor of the district and the assessments, the City Council may proceed with adopting a “resolution of formation” establishing the district and levying the assessments on the benefiting parcels.

For clarity, the flowchart below outlines the basic formation steps:



The actual action steps to form the District are as follows:

STEP	RESPONSIBLE PARTY	STATUS
1. Assess strength of interest in forming the CBD – Conceptual feasibility survey	Staff and the consultant with guidance from interested property owners.	Complete
2. Enact the enabling Ordinance	City Council	In-Progress
3. Consultant writes the management district plan that lays out the special benefits to be conferred to the parcels. Includes benefit zones, costs of the services, duration of the district, management of the district,	Consultant with input from the steering committee, the City Attorney’s office and the Assessment Engineer.	In Progress

STEP	RESPONSIBLE PARTY	STATUS
etc. The plan must be approved by the City Attorney and a registered assessment engineer in the State of California. Once the Plan has been approved, the petition drive commences		
4. Completed petition from property owners indicating support for the District. At least 30% of the property owners, by weight, must sign a petition of support to trigger the mail balloting process	Staff, Consultant, and property owner steering committee	Next step
5. Based on results of petition, if there is support, adopt a Resolution of Intention during a regularly scheduled City Council meeting to form a district	City Council	Future
6. Ballot materials are mailed to all property owners in the proposed District no less than 45 days prior to Public Hearing on formation of the proposed district. The City Clerk will mail out the ballots to all affected property owners within the proposed Downtown CBD	City staff, through the Clerk's Office, will monitor the entire mail balloting procedure. Property owners must mail back their ballots in sealed envelopes that cannot be opened until the public hearing is held	Future
7. Public Hearing is held.	City Council	Future
8. Based on balloting and Public Hearing, the CBD is adopted or rejected	City Council	Future

Why a CBD instead of a PBID?

Some members of the City Council and one property owner present at the March 3 meeting questioned the need for a CBD versus a PBID. A CBD is simply a locally modified PBID that, in this case, allows a lower petition threshold of support from property owners in order to prompt the City Council to initiate the formation process, and extends the term for the district. The term CBD is commonly used to distinguish a district formed based on modifications to the PBID Law from districts that were formed according to the PBID law. Charter cities generally use a modified process to form CBDs whereas general law cities can only use the PBID process.

Modifying the requirements found in the State PBID law is recommended for the following reasons:

- CBDs can be created for a longer period of time (PBIDs are limited to an initial term of five years), which means the CBD provides a greater level of flexibility and more certainty for engagement in longer-term economic development activities. This is particularly relevant due to the end of Redevelopment. The CBD model will allow for capital improvements and long-term financing of projects, as well as a longer-term vision for the improvement of Downtown Hayward.
- The extended lifespan of a CBD (in Hayward's case fifteen years) reduces expensive consulting costs associated with renewal, including the need for City staffing support during the process. It also allows the property owners to help fund longer term projects such as public space activation, signage, and other special benefits to the district.
- CBDs can include mixed-use areas, providing for flexibility in creating districts that reflect the changing face of downtowns. All property owners, including tax exempt parcels, pay into the district.

A 30% threshold for the property owner petition to initiate the formation process is more reasonable and helps to move the District formation forward more efficiently. The threshold to initiate the formation process is reasonable and will ensure that active, engaged, and willing property owners will be able to move forward to fully develop the elements of a successful CBD in Hayward in a way that will benefit all property owners and businesses. In addition, twenty-three Charter cities including San Leandro, Oakland, Berkeley, San Francisco, San Jose and more recently Redwood City, have all adopted local enabling ordinances that provide for a 30% weighted petition trigger.

Basis for the enabling ordinance

Pursuant to the state PBID law, the district can last no longer than five years after its initial creation, but it can be renewed in additional ten year increments. Charter cities have more leeway to utilize procedures that differ from the PBID Law in establishing their respective districts.

The City's Community Benefit District Ordinance, introduced by the Council on March 3, 2015, incorporates all provisions of the State PBID law with the exception of the threshold petition requirement and the term of the district. As stated above, the City, as a Charter City, has the ability to modify certain elements of the State PBID law by adopting a local ordinance. The City's Ordinance creates a more reasonable threshold for the property owner petition to initiate the formation process to 30%. Note: the petition does not create the district, the mail balloting does. The mail balloting procedures in the local enabling ordinance are dictated by the State Constitution and are identical to that of the PBID formation process.

The Hayward enabling ordinance also extends the initial lifespan of the district from five years to fifteen years, as allowed by the PBID law and the City's charter authority. Importantly, the ordinance does not modify the weighted voting procedure required by Prop. 218 described above. This is a Constitutional requirement that cannot be locally modified. The more reasonable petition threshold does not in any way affect the Prop. 218 voting procedure that takes place later in the formation process of the district; the lower petition threshold simply helps districts get to the Prop. 218 voting process.

Benefits of special benefits districts

- A CBD acts as a unifying mechanism for all stakeholders in a business district or mixed use community to voluntarily work toward a common goal - that of a vibrant business district and mixed use community. In addition, adoption of this enabling ordinance would allow for a multitude of special benefits districts (residential, industrial, common industry) throughout the Hayward community, as long as they were initiated by the benefitting property owners.
- A CBD's governance structure provides property owners with a stronger hand in affecting real and lasting changes to the downtown. As an independent 501 (c)(3) nonprofit organization, the CBD is administered by the property owners in the district, not by the City. Any improvements or services planned by the CBD must still comply with applicable permitting and zoning requirements, as well as other applicable local and state regulations.
- A CBD supports businesses through recruitment and retention activities, and promotion of the area.
- CBD funds provide services to a district based on a clearly defined management plan, including clean-up programs, enhanced landscaping and decorations, increasing safety and security, as well as public space development and management. This is particularly relevant to Downtown Hayward, which has long struggled with many of these issues.
- On a broader scale, a CBD involves those services "which confer a benefit to real property owner" over and above what a City will normally provide. Other Charter cities

including San Francisco, San Diego, San Jose, Oakland, Alameda, Berkeley, and Los Angeles have already adopted similar ordinances that allow for longer term special benefit districts with more reasonable petition thresholds. Such special benefit services may include:

- Cleaning of the public rights of way, sidewalks and gutter;
- Steam cleaning of sidewalks in the district;
- Additional removal of trash and bulky material;
- Security services over and above the services of the local police force;
- Installation of security cameras;
- Parking services or transportation related services;
- Economic development activities;
- Business attraction and retention and structuring a proper commercial mix;
- Graffiti removal;
- Administration and advocacy on behalf of business districts or neighborhoods;
- Beautification and decorations and special lighting;
- Tree maintenance, planting, watering;
- Marketing and promotion;
- Special community or neighborhood fairs, festivals or events; and
- Public space development and management.

By law, the special assessments imposed pursuant to the CBD Ordinance may only be used to pay for the cost of improvements and services – such as those outlined above – provided within the district boundaries. Improvements or services that benefit properties outside the district boundaries, one property owner or group of property owners, or the general public cannot be funded by the special assessments paid by the property owners within the CBD.

NEXT STEPS

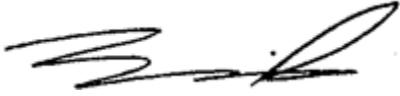
Upon Council's approval of the enabling Ordinance, public outreach activities will be ongoing throughout the District formation process. Staff is scheduled to present to the Chamber of Commerce's Government Relations Committee on April 10 and to the Chamber's full Board of Directors on April 23. Updates will continue to be provided to the DBIA and staff will conduct outreach to the United Merchants group as well. The steering committee will continue to meet throughout this process. All property owners were initially invited to participate on this steering committee and will be included in these future meetings if they express a desire to do so.

In addition to the initial survey mailed in fall of 2014, downtown property owners have recently been mailed property verification forms with contact info for questions and comments. Property owners will soon receive a newsletter providing further information and a summary plan for the district, followed by a subsequent mailing providing the specific plan and petition. Ballots would likely be mailed to property owners sometime in June. No sooner than 45 days after mailing the ballots, the City Council will hold a public hearing to tabulate the ballots and adopt or reject the district formation and levy of the assessments.

Prepared and Recommended by:

Frank Holland, Community and Media Relations Officer
Michael Vigilla, Assistant City Attorney

Approved by:

A handwritten signature in black ink, appearing to read 'Fran David', written over a horizontal line.

Fran David, City Manager