


Agenda Report Reviewed by:  
City Manager: 

CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM

Meeting Date: March 15, 2022  
To: Honorable Mayor and City Councilmembers  
From: City Administration  
Subject: Informational Item – Information/Process of Expansion of Business Improvement District (BID)  
Recommendation: That the Mayor and City Council Receive the Informational Presentation  
Funding: Currently Budgeted: \_\_\_\_\_ Yes \_\_\_\_\_ No  X  N/A  
Net General Fund:  
Contract Services  
Amount:  
Net General Fund Cost:

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

**INTRODUCTION:**

This item is to request City Council Receive the Informational Presentation from City staff as requested by Councilmember Gurney for an explanation of the process for Expansion of the Business Improvement District (BID). A copy of the request is attached for reference.

**BACKGROUND:**

A BID is a geographically defined area within the City in which property and/or business owners vote to pay an assessment to fund programs and projects within the district's boundaries with the goal of improving commerce. These districts typically fund services which are supplemental to those already provided by the City, including cleaning streets, providing security, making capital improvements, construction of pedestrian and streetscape enhancements, marketing, and increasing economic development and livability. Typically BIDs are largely self-managed and self-funded, and are formed with minimal involvement from city staff and elected officials.

On November 15, 1976, the Sebastopol City Council adopted Resolution No. 2743 entitled "A Resolution of Intention to Establish a Sebastopol Parking and Business Improvement Area" describing the boundaries thereof, fixing the date of public hearing, indicating the proposed use to which the proposed revenue shall be put, fixing the initial rate of the license tax and establishing the classification of businesses subject to the tax as authorized by the Parking and Business Improvement Area Law of 1965. The area is found in Chapter 5.06 of the Sebastopol Municipal Code and the map is attached to this report for your information.

The City of Sebastopol as a lease with the Sebastopol Downtown Association (SDA) for receipt and disbursement of funds received in the City of Sebastopol Business Improvement District area.

**DISCUSSION:**

Tonight's item is to provide information to the City Council on the process and outline of expanding a Business Improvement District. The item is not to decide at this meeting whether or not to expand a district but to receive an explanation of the process for an expansion of a Business Improvement District.

A Business Improvement District is a program of a city under which the city levies an assessment against businesses or property to fund services or improvements that benefit the assessed businesses or property. The program of services, improvements, and assessments are described in documents created during the establishment process. The description of the program is typically created by a BID consultant. A city council can only establish a BID after the owners of the businesses or property have indicated their support (or lack of opposition) for the BID via a petition; a ballot or protest proceeding; or both. (The Business Improvement District approved in 1976 was established under the Parking and Business Improvement Area Law of 1965 (Str & Hwy Code §36000 et seq.) This assessment is collected annually by the Administrative Services Department through the Business License Application.

Expansion Process:

While a BID can be designed by City staff in house, it is typical for these programs to be created by a specialized BID consultant. Consultant fees are paid by the City or paid by BID proponents. It is not uncommon to reimburse these costs from the initial BID assessments; however, if the BID is not successfully established, there will be no assessments from which to make reimbursements. In that event the City (or the proponent group) will have essentially lost the money it advanced.

Regardless of who pays the consultant's bills, consultants typically work very closely with the City or proponent group as a starting point for designing (or in this case expanding) the BID program. The consultant then meets with other business and property owners at community meetings and via one-on-one contacts. A key goal of consultants is typically to develop a program that has wide support and is likely to be approved (or not to be protested) by affected business or property owners. It is not uncommon for BID consultants to continue in an administrative or consulting role once a BID is formed. Those services are typically funded with BID assessment proceeds.

In simple terms, the process for a BID is as follows:

The city council adopts a "resolution of intention" setting forth the details of the BID program, a date and time for a public hearing, and other information required by statute; Within seven days of adopting the resolution of intention, a complete copy of that resolution must be mailed to each business owner in the territory of the proposed BID; The city must mail to each business a "joint notice of public meeting and public hearing." This "joint notice" is typically mailed along with the copy of the resolution of intention; No earlier than ten days after mailing the "joint notice," the city council must hold "at least one public meeting at which [the city council] shall allow public testimony regarding the proposed...new...assessment; No earlier than forty-five days after mailing the joint notice, and no earlier than seven days after the public meeting, the city council must hold a public hearing; At the public hearing, the city council must consider oral and written protests if written protests meeting the requirements of Section 36524 of the Streets & Highways Code are received (and not withdrawn) from "the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied", then proceedings must be abandoned for no less than one year; Otherwise, the city council may (but is not required to) adopt an ordinance establishing the BID.

It is not unusual for cities to create additional procedural steps, such as a petition requirement for BIDs established. Additional requirements can be to gauge stakeholder interest before using municipal resources to develop (expand) a BID program. Cities can impose such requirements because a city council always has the discretion (i) not to adopt a resolution of intention to establish (expand) a BID and (ii) not to establish (expand) a BID. Consequently, city councils can impose additional requirements on BID proponents by refraining from taking action on a BID unless both locally requirements and statutory requirements have been met.

Cities can structure BIDs so that the services and improvements are provided directly by the city. However, it is much more common for services and improvements to be provided either by an existing nonprofit organization or by a nonprofit organization formed by BID proponents specifically to serve the BID. This would be governed by their articles of incorporation and bylaws. They usually are governed by a board of directors that is elected, in a

self-administered proceeding, by the business owners subject to the assessment. Those owners usually constitute the membership of the association. The associations usually have an administrative staff (sometimes consisting of little more than an executive director). The Sebastopol Downtown Association (SDA) manages this agreement.

The process of establishing a BID involves the production of a number of documents that are provided to business and property owners to help them understand what is proposed. These documents can include notices, petitions, ballots and management district plans. It is generally in the public interest that these documents be as complete, factual and neutral in tone as possible, since these documents are, for the most part, issued or approved by the city. If these documents are not complete, factual and neutral in tone, business and property owners can feel misled. However, these documents are often initially drafted by proponents of the proposed BID or by consultants who work closely with those proponents. The proponents have a strong interest in “selling” the proposed BID to stakeholders who might sign petitions, submit protests, or cast ballots in connection with the proposed BID.

A Business Improvement District management plan (or other council-adopted document) serves as the “constitution” for a BID. Proponents often desire that the Management District Plan include much flexibility regarding how money can be spent. This desire is understandable, given the difficulty of planning a new, long term program. However, too much flexibility can allow for delivery of a program that might not seem to match what was promised. Too much flexibility arguably can also undermine the benefit analysis that legally justifies the amounts of assessments.

**Administrative Expenses** There are two sorts of administrative expenses associated with a BID: (i) expenses incurred by the city and (ii) expenses incurred by the association. It should be determined early on to what extent city expenses, such as expenses associated with collection of assessments, administration of the association contract, or administration of annual proceedings, will be funded from assessment proceeds. Especially if the association is an organization that has functions beyond providing BID services and improvements, it can be important to define what association administrative expenses can be funded with assessment proceeds. These choices should be covered in detail in the contract between the city and the association.

**Cash Flow** The collection method used for assessments will affect the schedule on which a city received assessment proceeds. Care should be taken to make sure that all interested parties have a good understanding of the schedule on which proceeds are likely to be available; as well as the means for their use.

Sebastopol transfers proceeds to the SDA twice per year. Once is after business licenses have been received (typically February/March time frame) and then a second transfer prior to June 30<sup>th</sup> to close out the fiscal year budget.

Business and property owners often worry that cities will see the establishment of a BID as an opportunity to reduce existing services provided by the city within the territory of the BID. It can be very difficult to draft language that ensures baseline services within a BID, but does not interfere with future decisions about how to respond to future budgetary constraints or changes to city services.

**Internal Organization of Association:** Like any private corporation, an association is governed by its articles of incorporation and bylaws. These documents determine who is a member of the corporation and how the corporation selects its board of directors. Outside of the BID context, a city generally has little interest in the internal organization of corporations that it contacts with. However, businesses and property owners subject to assessment in connection with a BID generally expect that the board of directors of an association will be selected in an inclusive process that fairly involves all those subject to assessment. Cities therefore may want to have input into the provisions included in the bylaws.

Business and property owners who serve on association boards often are not used to the type of open meeting and open records requirements that have become second nature to long-time public officials and staff. Small associations often have extremely small staffs, and therefore depend on board members to volunteer their time to directly perform management and operational functions. This dynamic can make it hard for board members to comply with open meeting laws.

The petition, ballot proceedings, and protest rules applicable to BIDs all weight the “vote” (or voice) of a stakeholder by the amount of his or her assessment. This potentially means that a small number of stakeholders will account for a large majority of the weighted voice. Thus, it is sometimes possible for a BID to be established despite the existence of a large number of small stakeholders. City Management staff and elected officials may want to be aware of the possibility of this dynamic. A city council always has the option to not establish a BID, even if the BID has survived petition, ballot proceeding or protest hurdles.

Reasons for Expansion:

**1) To reverse a negative image.**

*Many cities’ areas are burdened with an image of being unsafe, unclean, and generally run down. An area’s overall image affects the individual businesses located in and around the area. A District can provide effective tools, such as maintenance programs to help dispel a negative image by changing existing conditions of blight and crime. A district can provide unified marketing programs to communicate the positive changes in the District, effectively eliminating old perceptions.*

**2) To attract new businesses and investment.**

*Many cities continue to experience a high rate of vacancies and decrease in investment. A cleaner, safer, and more vibrant District will accelerate efforts to attract new businesses and investment back into the District. A Management District can provide results-oriented business retention and recruitment programs.*

**3) To create a unified voice for the District.**

*For most downtown areas and commercial districts, business interests are fragmented among a diversity of groups and individuals. One unified management entity, with reliable resources, increases a District’s clout and ability to work effectively with the local government and other civic and social organizations in the community.*

Although there has been a lot of information in this report, there are still technical details that would be too lengthy to put into this report. Staff has provided a short recap listed below of the process but if the Council wants a more detailed, step by step report, it is proposed that the City engage with a BID consultant to provide an informational presentation at a future city council meeting,

Recap:

*The basic steps to form a BID are:*

*1) Prepare a Management Plan identifying the type of district and its geographic boundaries, assessment fees, beneficial activities and budget. The Management Plan*

*The Management Plan must include the following information:*

- *District Name*
- *Geographic area included in the district*
- *Types of businesses or properties to be assessed*
- *Beneficial needs and purposes of the assessment*
- *Term for the BID*
- *Method of calculation and total of the annual assessment*
- *A list of businesses or properties in the district*
- *Any other supporting information request by City Council*

2) *Submit the Management Plan to the City Council for scheduling of a public hearing on the formation. (For a PBID, a petition signed by owners representing at least 50% of the assessment value of the district must be submitted with the Management Plan).*

3) *Approval of stakeholders representing at least 50% of the businesses or property assessment value is required. For PBIA's, approval would be denied if more than 50% of the businesses protest at the public hearing. For PBID's, approval would be denied if the results of a Prop 218 ballot indicated that owners of properties representing over 50% of the assessment value object to district formation. Otherwise, the district will be approved with any additional changes made by the City Council. (Note, that large businesses and property owners are given greater weight by the state law. Since the voting is measured not by one owner – one vote, but by weighted percent of assessment paid)*

**CITY COUNCIL AND/OR GENERAL PLAN GOALS:**

- 4.1 Create a Safe, Healthy and Attractive Environment for Residents and Visitors
- 8.1 Promote the City of Sebastopol as the destination for slow travel, eco-tourism and supporting of bike activities
- 8.1.2 Support a Vibrant, Attractive and Accessible Downtown That Attracts Residents and Visitors thereby creating a Viable Sales Tax Base

**PUBLIC COMMENT:**

As of the writing of this staff report, the City has not received any public comment. However, if staff receives public comment from interested parties following the publication and distribution of this staff report such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of this item.

**PUBLIC NOTICE:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

**FISCAL IMPACT:**

There is no fiscal impact with this informational item.

**RECOMMENDATION:**

That the City Council Receive the Informational Presentation

**Attachment(s):**

Request for Agenda Item



**Sarah Glade Gurney**

City Councilmember

**City of Sebastopol**

7120 Bodega Avenue

Sebastopol, CA 95472

[www.cityofsebastopol.org](http://www.cityofsebastopol.org)

REQUEST FOR ITEM TO BE PLACED ONTO A CITY COUNCIL MEETING AGENDA

Date: January 19, 2022

Name of Council Member Submitting Item: Sarah Glade Gurney

Subject of Item: Information re Expansion of Business Improvement District (BID)

Description of Item for Agenda and/or Staff Report:

Given recent discussions, by the Relaunch candidates and others, and apparent interest in expanding the existing Business Improvement District, the Council could benefit from an informational report from Staff about the procedural and legal steps necessary to make changes to the current SDA boundaries, and any required timelines.

It would be helpful for all Council Members to receive the same information at the same time and learn how the expansion could be accomplished. It may not be as simple as it has sounded.

This information would alert the Council to its future responsibilities and workload: what is the Council's role in our public meeting process were the boundaries to be changed? It's possible that the Relaunch team could recommend changes to the boundaries, the SDA could ask for changes, our wider business community could want changes, etc.

This initial discussion is not intended to direct or manage the Relaunch work. It is simply for the Council to understand the "how to's" of the process ahead of time.

Estimated Amount of Time for Discussion at Meeting: 15-20 minutes

Requested Date of City Council Meeting for Item: February 15, 2022

Alternate Date for City Council Meeting for Item: March 1, 2022

Will this require Staff time? Yes, the Staff Member designated by the City Manager/Attorney may need to research the "how-to's," will draft a Report for the Council packet, then present at the Council meeting.