



Legislation Text

File #: 20-142, **Version:** 2

Ordinance No. 20-19 amending Ordinance 02-24 to Allow City Council to Fill Vacancies on the Board of Directors of the Briargate Business Improvement District by Appointment.

(Legislative)

Presenters:

Carl Schueler, Comprehensive Planning Manager
Peter Wysocki, Planning and Community Development Director

Summary:

This request pertains to interim appointment of members of the Board of Directors of the Briargate Center Business Improvement District (the "BID"). State Statute (§ 31-25-1209(d) C.R.S.) provides that the governing body of a municipality may provide by ordinance that the Board of Directors of a Business Improvement District may be elected by the electors of the district. Because there were no original appointments, there is no mechanism by which vacancies on the Board may be filled other than by election.

The Board of this BID was temporarily vacated in the Fall of 2019 due to a change in property ownership. In December of 2019, City Council appointed an interim board of directors from among the current ownership group, in order to allow the BID to discharge its duties until the next opportunity for an election (May of 2020). This action to amend Ordinance No. 02-24 brings the original ordinance creating this BID into conformance with the December, 2019 appointment action, and allows Council to temporarily fill any future board vacancies if necessary. This action was contemplated and represented to Council at the time of the December, 2019 appointments.

This item was introduced at an April 14, 2020 Council Work Session, at which time there were no questions or comments.

As an update, counsel for the District reports that appropriate procedures have been followed, allowing for the May, 2020 election to be canceled and for the candidates to fill these positions for their initial full terms.

Background:

BIDs are created under Colorado Statute and City Policy to finance and/or maintain certain public improvements in non-residential areas, utilizing a property tax mill levy as the revenue source. BIDs are a separate legal entity from the City, but their budgets and operating plans must be approved annually by the City.

In 2002, by Ordinance No. 02-24, City Council organized this BID and provided that the members of the Board of Directors would be elected by election. This BID has been active since its inception in 2002. It currently has a total mill levy of 39.0 mills (35.000 mills for debt service and 4.000 for

operations and maintenance).

In the Fall of 2019, the property in this BID was sold to a different group of investors, thereby vacating its then-current Board. On December 5, 2019, City Council approved Resolution No. 139-19 temporarily appointing five (5) directors prior to the next regular election scheduled for May of 2020. That Council action was necessary in order allow for a board to direct the essential functions of the District during this interim period. This ordinance amendment essentially formalizes the authority related to Council's action and provides more clear and consistent language in the event other temporary City Council appointments are necessary in the future.

This BID issued \$2,895,000 in Limited Tax General Obligation Bonds, Series 2002A in Special Assessment Revenue Bonds, Series 2002B and \$6,875,000 in Special Assessment Revenue Bonds, Series 2002B, for the purpose of financing the construction and/or acquisition of public improvements needed to serve the Business Area. In 2006, the BID refunded its 2002B Special Assessment Bonds through the issuance of \$7,360,000 in Special Assessment Refunding Revenue Bonds, Series 2006. In 2012, the BID refinanced its Series 2002A bonds in the form of a Series 2012A loan for \$4,335,000, of which a portion of the proceeds was used to reimburse the original developer. The District received approval from the City Council to modify/refinance this loan in November 2018 in the amount of \$3,379,500. The BID also has an acquisition and reimbursement agreement in the amount of approximately \$6.2 Million, with that agreement not constituting formal debt.

By Ordinance No. 02-24, City Council organized the BID and provided that the members of the Board of Directors would be elected by election. Ordinance No. 02-24 did not include a process by which vacancies on the Board would be filled. State Statutes state that vacancies will be filled in the same manner as the original appointment. Please refer to C.R.S. §§ 31-25-1209(d) and 31-25-1209(b)(1).

By Ordinance No. 02-24, City Council originally organized the BID and provided that the members of the Board of Directors would be elected by election. The proposed City Council ordinance amends the original 2002 ordinance that created the BID to include a process for appointments to the Board to fill vacancies.

A similar ordinance amendment was approved by Council in 2017 in conjunction with the need to temporarily appoint members to the Board of Directors of the Interquest South BID.

In the future staff suggest that a systematic approach be used to proactively amend the original creation ordinances for all remaining BIDs with applicable circumstances.

Previous Council Action:

The BID was established pursuant to Ordinance 02-24 adopted by Council on February 12, 2002, which approved the initial operating plan and budget ("Operating Plan") for the BID. The BID's Operating Plan has been approved annually in accordance with Section 31-25-1211, C.R.S., and most recently on October 22, 2019. Council has also approved 2002 bond issuances as well as 2006 and 2012 bond refinances as further described above. In November 2018 Council approved the issuance of a limited tax general obligation refunding loan with an estimated principal amount of \$3,544,500 (Res. 147-18). On December 5, 2019 Council adopted Resolution No. 139-19, temporarily appointing five (5) members to the Board of Directors of this BID.

Financial Implications:

There is no direct financial implication to the City from this action.

Board/Commission Recommendation:

The City's staff-level Special District Committee was provided copies of the original December 2019 appointment requests, and there were no comments or concerns at that time.

Stakeholder Process:

Not applicable.

Alternatives:

City Council could choose to approve, not approve or modify the proposed ordinance.

Proposed Motion:

Approve an ordinance amending Ordinance No. 02-24 to allow City Council to fill vacancies on the Board of Directors of the Briargate Center Business Improvement District by appointment.

An Ordinance Amending Ordinance 02-24 to Allow City Council to Fill Vacancies on the Board of Directors of the Briargate Center Business Improvement District by Appointment.