



Legislation Text

File #: 18-0313, **Version:** 3

Ordinance No. 18-77 organizing the USAFA Visitor's Center Business Improvement District and appointing the initial Board of Directors. (Legislative Item)

Presenter:

Peter Wysocki, AICP, Planning and Community Development Director
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Summary:

This is a request to create a new USAFA Visitor's Center Business Improvement District ("District") to finance and maintain improvements within its boundaries to support the development of a 57-acre commercial mixed-use development located near the north entrance to the United States Air Force Academy (the "Project"), which is proposed to include a combination of visitor center, hotel, office, retail and open space uses. The ordinance also appoints the initial Board of Directors of the District. This item will was presented for action at the July 24th, 2018 City Council meeting.

Staff note: Earlier in the submittal and review process, this proposed BID had been referred to as the "Blue and Silver Business Improvement District".

Upon first reading or this ordinance on July 24, 2018, the adopted motion for approval was as follows:

Motion by Councilmember Knight, seconded by Councilmember Bennett, to approve on first reading the Ordinance organizing the USAFA Visitor's Center Business Improvement District, amending section 4 to reflect an initial City Council appointment of a board of directors with a subsequent election of board members no later than May 2022, and amendment of the 2018 Operating Plan and Budget in Section 2.D. to remove the language "term limits will be waived" and in Section 6.B. amend the language to set a maximum debt authorization limit of \$22M. The motion passed by a vote of 7-2-0-0

A revised initial Operating Plan and Budget is attached with these changes incorporated.

The Project is located on property owned by the United States Air Force Academy ("USAFA") that will be developed through a long term lease arrangement with the USAFA as part of the USAFA's Enhanced Use Leasing Project.

The 57 acres underlying the Project (the "USAFA Property") is not currently located within the boundaries of the City. As further described in the Operating Plan, the District will initially be formed on a smaller parcel of land located in the Briargate area within the City for the specific and sole purpose of allowing the District to hold a TABOR election in November of 2018.

It is proposed that, upon the annexation of the USAFA Property, the boundaries will be reconfigured to include that property including the planned new Air Force Academy visitor's center to be located along North Gate Boulevard west of Interstate 25.

The creation of the USAFA Visitor's Center Business Improvement District to support financing the Project is proposed to occur in three steps:

Step 1: Create the temporary BID on an existing lot located at 2435 Research Parkway.

Step 2: Annex the land on which the Project will be developed.

Step 3: Transfer the BID from 2435 Research Parkway to the Project site

The creation of the temporary BID boundary now is necessary in order to accommodate the November 2018 mill levy election cycle. The BID cannot be created on the Project properties because they are not within the City. (Note: BIDs are a city construct and can only be created within incorporated cities.) Establishing the temporary BID boundary at a temporary location helps expedite the planning of the Project while the annexation of the Project properties - at the north entrance to USAFA - is processed, which will take approximately six months.

Following the annexation, the initially included property - at 2435 Research Blvd. - would be excluded from the BID and the Project area would be included. This anticipated future exclusion and inclusion will be subject to subsequent approval by City Council by ordinance.

Previous Council Action:

There have been no prior Council actions specific to this property because it is currently not included within city limits. Petitions are pending for annexation of this property and for related land use approvals.

In September of 2014, the Colorado Economic Development Commission approved Sales Tax Increment Financing for the visitor center project as part of their City for Champions agreement.

This item was introduced at a City Council Work Session on July 9, 2018

Background:

BIDs are created under Colorado Statutes and City Policy to finance and/or maintain certain public improvements in non-residential areas, primarily utilizing a property tax mill levy as the revenue source. By Colorado Statutes, properties assessed as residential cannot be levied a BID tax.

BIDs are separate legal entities from the City. However, their formation requires Council approval, and City Council must then annually approve their Operating Plans and Budgets. These processes provide an opportunity for City Council to establish limits and parameters for operation of the BIDs beyond those included in State Statutes. City Council adopted a Special District Policy ("Policy") in 2006. It establishes recommended limits regarding districts including metropolitan districts, BIDs and general improvement districts (GIDs), including mill levy caps. In 2014, Council adopted a standard template for BID operating plans and budgets. Together with State statutes, these documents are used as the standard with which to review new BIDs.

The petitioners desire to create the District as a mechanism to allow for additional options for financing and maintenance of public improvements and services both within and outside of its ultimately intended boundaries.

Options for governance for BIDs include City Council serving as the ex officio board of directors, a Council-appointed board, or an elected board. The petitioners are proposing to have an initially City-appointed board of directors after which the positions on the board will be appointed by City Council to serve at the pleasure of the City. Having an appointed board is consistent with the governance structure used for the Greater Downtown BID, which also has a Council-appointed board.

The initial Board of Directors will be comprised of the following individuals:

John Fox
Don Hunt
Tom Markham
Dan Schnepf, and
Eric Smith

Mr. Smith and Mr. Schnepf are current principals with the firm developing this project. The other three gentlemen are currently operating as consultants to the project, and have extensive business, financial and other experience. The BID will convert to an elected board format on or before May of 2022.

The petitioners have provided an Initial 2018 Operating Plan and Budget using the City's adopted model. It stipulates a maximum debt service mill levy cap of 50.0 mills and up to 10.0 mills for general operations and administrative expenses, which are allowable under the 2006 Special District Policy for commercial districts.

The City's standard-form BID Operating Plan and Budget template requires petitioner to seek prior approval for use of a Public Improvement Fee (PIF) in conjunction with BID debt issuance. Under current law the City otherwise has no authority over whether a property owner chooses to record a PIF covenant on their property. In this case the petitioners have drafted their initial Operating Plan and Budget to allow full authority to use a PIF in conjunction with their BID.

In addition to district property tax revenues and PIF revenues, the petitioners have stated an intent to seek urban renewal area designation for their property. This would allow the potential either for this BID to issue debt with tax increment financing (TIF) revenues as an added source of pledged revenues, or for the Urban Renewal Board to issue debt with BID property taxes as an additional revenue source.

The urban renewal area designation process and associated policy choices are separate from and outside of this BID review process. The urban renewal designation process has NOT been started yet. It is anticipated that the entire process will take approximately 9 to 12 months.

In addition to the annexation timing issue, another unique aspect of this proposed BID centers on the ownership of the property to ultimately be included. Ownership is expected to remain with the United States Air Force (USAF) for the life of the project and District and be leased to the developer via USAF's Enhanced Use Leasing Project. Although federal properties are ordinarily tax-exempt, the

petitioners note a provision in State assessment law that allows the improvements on federal properties to be assessed as private, taxable property when improvements contained on them are considered “private holdings” or “private tenancy”.

The initial Operating Plan and Budget is written to include contingences addressing the need for certain actions to occur prior to this proposed BID being authorized to perform most functions including certification of a mill levy or issuing of debt. These same limitations protect the future discretion of City Council and the Urban Renewal Board to approve or not approve future development or urban renewal area petitions and requests. The initial Operating Plan and Budget contains a specific provision requiring the BID to dissolve in the event the USAFA Property has not been annexed and included within this BID prior to December 31, 2021.

Based on discussion and direction at the July 9, 2018 City Council Work Session, the 2018 Operating Plan and Budget has been revised to stipulate that no mill levies can be put in place for 2018 (this cannot happen in any case). The petitioners have expressed an interest in requesting mill levy certification as part of their 2019 Operating Plan and Budget which would be submitted and acted upon in late 2018.

A revised petition for organization of this BID is attached. It removes the authority for this BID to form special improvement districts (SIDs). Per the standard form Operating Plan and Budget, this activity requires prior City Council approval.

Financial Implications:

Pursuant to the Policy and the initial Operating Plan and Budget, the debt and financial obligations of BIDs do not constitute financial obligations of the City. The District does not anticipate any debt issuance for the remainder of 2018. Initial funding will be provided by the developer and thereafter be derived from property taxation and the proposed PIF. At the July 9, 2018 Council Work Session, a concern was raised regarding the fact that no maximum authorized indebtedness limit is stipulated in this 2018 Operating Plan and Budget. Staff notes that the document does contain the following statement in section 6.B:

“This District is not authorized to issue any debt under this Operating Plan.”

Therefore the maximum authorized debt for 2018 will effectively be \$0.

The petitioners have attached list of potentially eligible costs, with and added contingency factor. In their proposed 2019 Operating Plan and Budget, due later this year, the District may ask for an authorization based on this information as it may be updated. In any case, the District will be constrained from issuing debt until and unless other actions take place, including successful annexation of the property to be served by the BID. Among the powers of BIDs are the powers to enter into contracts, own property, levy property taxes and fees and incur debt (subject to TABOR provisions).

Board/Commission Recommendation:

The City’s staff-level Special District Committee has been provided copies of these materials. All comments received have been in support and/or stated no concerns.

Stakeholder Process:

Legal publication of this hearing will be required along with mailed notice to any potentially included properties not part of the petition.

Alternatives:

City Council could choose to approve, deny or modify the proposed ordinance.

Proposed Motion:

Move to approve an Ordinance organizing the USAFA Visitor's Center Business Improvement District and appointing the initial Board of Directors.

An ordinance organizing the USAFA Visitor's Center Business Improvement District and an appointment of the initial Board of Directors.