



## Legislation Text

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**File #:** 19-234, **Version:** 1

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An ordinance excluding certain property from the Creekwalk Marketplace Business Improvement District

(Quasi-Judicial)

**Presenter:**

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**Summary:**

This is a request for approval of an ordinance to exclude three parcels from the boundaries of the Creekwalk Marketplace Business Improvement District (the "District"). The City received a Petition for an Exclusion of Properties as executed by the owners. Their justification/rationale for exclusion is included in an attached letter. The Board of the District objects to the proposed exclusions and has provided a response which is also attached.

State law requires that all inclusions or exclusions of property into or from BIDs must be approved by the City by ordinance. As further described below, Colorado State Statutes include specific language that must be applied when acting on these requests.

**Previous Council Action:**

The BID with its initial operating plan and budget was established by Ordinance 16-18 made effective on March 3, 2016. City Council subsequently approved a request for Inclusion of Property into this BID by Ordinance 17-87, made effective on October 4, 2017. On February 27, 2018 additional property was included by Ordinance 18-10. The most recent round of inclusions was approved by Ordinance 19-19 on March 12, 2019. This BID's Operating Plan has been approved annually since that time in accordance with C.R.S. Section 31-25-1211, and most recently in October 2018.

A resolution to authorize the first issuances of debt by this BID is currently under Council consideration.

**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 their primary revenue source. BIDs are separate legal entities into the City, but their budgets and operating plans must be approved annually by the City.

This BID is authorized to levy up to 50.0 mills in debt service and 10 mills for operations and maintenance, and has a maximum debt authorization of \$50,000,000.

Changing the boundaries of a BID by inclusion of property is governed by C.R.S. §31-25-1220, which requires the property owner to petition the governing body of the municipality in which the BID is located. Upon receipt of a petition for exclusion, notice of the petition must be given in accordance with C.R.S. §31-25-1220. The notice must inform all persons having objections to the exclusion to appear at a hearing to show cause why the petition should not be granted. If the governing body (City Council) determines that changing the boundaries of the BID as requested by the petition does not adversely affect the BID, the governing body may grant the petition by ordinance. A certified copy of the ordinance is then filed with the County Clerk and Recorder and the property is then excluded from the boundaries of the BID.

State Statute (Section 31-25-1220, C.R.S.) requires that any exclusions of property from Business Improvement Districts be approved by the City, by ordinance. In accordance with the statutory section cited above, the petition for exclusion has been verified. The City has handled legal publication in this case, because of the unique circumstances leading up to the scheduling of this hearing.

This petition was filed on or about April 17, 2019, along with the City application fee, along with a transmittal letter and a form of the legal notice to be published.

As depicted in the attached PowerPoint presentation, the current BID boundaries consist of a number of sometimes noncontiguous properties primarily located in the southern part of the South Nevada urban renewal area. The three parcels being petitioned for exclusion are located on the east and west sides of Nevada Avenue in the northern part of the current BID area. The owners of these properties voluntarily agreed to be included in this BID (by virtue of signing the petition of inclusion) and were officially included in February of 2018.

Colorado Revised Statutes §31-25-1220 (1) includes the following language pertaining to decisions on changes in boundaries:

*“The boundaries of any district organized under the provisions of this part 12 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made”*

C.R.S. Section 31-25-1220 (3) includes language governing circumstances where there is existing debt at the time of property inclusion or exclusion:

*“All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion”.*

The petitioner's April 17, 2019 letter (attached) maintains the owners were not properly informed of the tax implications prior to their signing of petitions to include their properties, and that they will only

receive a limited benefit from certain streetscape improvements.

On April 19, 2019, counsel for the BID provided a detailed letter in response (also attached) requesting that Council deny the petition. This letter cites significant detail documenting the nature and extent of prior communication/disclosure with the one or more of the petitioners and making an argument for the proportionate value of BID improvements related to the subject properties.

Also attached is a letter from Sherman and Howard (litigation counsel for the BID) addressing litigation concerns specific to one of the properties (1609 S. Nevada Ave).

**Financial Implications:**

There should be no direct financial implications to the City based on a decision to either approve or disapprove these exclusion requests. The petitioners have provided arguments for why they believe the public improvement benefits associated with their properties remaining in this district are not commensurate with the financial obligations. The BID has provided arguments for the financial importance of keeping these properties as part of the BID. Attached is an email from the BID identifying a projected impact of these exclusions in the form of \$385,000 in bonding capacity.

**Board/Commission Recommendation:**

The City's staff-level Special District Committee has been provided copies of these materials.

**Stakeholder Process:**

N/A - although it is noted that the Urban Renewal Authority Board been kept apprised of this request, and has moved forward in supporting issuance of bonds by this BID with a pledge of tax increment financing (TIF) and related revenues with or without continued inclusion of the subject properties. This pledge is contingent on agreed upon Urban Renewal Authority oversight in accordance with their participation agreement.

**Alternatives:**

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

**Proposed Motions:**

Based on the evidence and testimony provided at the hearing, and in consideration of the relevant statutory language, City Council can either:

- A. Move to adopt an ordinance excluding certain property from the boundaries of the Creekwalk Marketplace Business Improvement District; or,
- B. Move to deny an ordinance excluding certain property from the boundaries of the Creekwalk Marketplace Business Improvement District.

An ordinance excluding certain property into the Creekwalk Marketplace Business Improvement District (Legislative Item, subject to City Attorney's Office confirmation)