

## **RESOLUTION NO. 2012-311**

Adopted by the Sacramento City Council

August 21, 2012

### **MODIFYING THE MANAGEMENT DISTRICT PLAN FOR THE HANDLE BUSINESS IMPROVEMENT DISTRICT NO. 2011-04**

#### **BACKGROUND:**

- A. On July 19, 2011, City Council approved formation of the Handle Business Improvement District No. 2011-04 (District). The business owners within the boundaries of the District petitioned the City of Sacramento to establish the District in order to provide services and improvements intended to increase restaurant and retail sales within the District.
- B. At the time of formation Council approved a Management District Plan (MDP) that governs the method of assessment for businesses, as well as the services to be provided. The MDP provides for the following improvements and services within the District, all of which are intended to make the District safer, cleaner, and increase the commercial activity: (1) Security services will be provided to complement existing security provided by City Police; (2) Lighting, Landscaping, and Signage; and 3) Image enhancement through Marketing and Advertising, to promote a vibrant commercial center. The improvements and services are funded through the levy of the benefit assessment on businesses within the District.
- C. The Handle District Board of Directors (i.e., the Owners' Association) has requested, per Streets and Highways Code Section 36635, that the City modify the MDP to clarify how the assessment is calculated for various retail activities within the district, to clarify policies related to delinquencies, and to formalize assessment invoicing methodology.
- D. On July 19, 2012, City Council (Council) adopted Resolution No. 2012-253 entitled "Resolution of Intention to Modify the Management District Plan for the Handle Business Improvement District No. 2011-04." As part of Council's action, the dates and times of the public meeting and public hearing were identified as follows: August 9, 2012, at 6:00 pm and August 21, 2012, at 6:00 pm, in the City Council chambers, New City Hall, 915 "I" Street (first floor), Sacramento, California, respectively. The City Clerk was directed to provide notice to affected business owners in accordance with Streets and Highways Code Section 36623.
- E. A complete copy of the Resolution of Intention was mailed to each affected business owner in the proposed District on July 22, 2012.

F. The City Clerk has filed with the City Council an affidavit confirming her compliance with the legal requirement for mailing a complete copy of the Resolution on Intention. Relying on this affidavit, the City Council finds that a complete copy of the Resolution of Intention was mailed to each business owner of identified parcels within the District, as ordered by Resolution No. 2012-253 and as required by law.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The Council finds and determines that the recitals set forth above are true.
- Section 2. The Council finds that the Owners' Association has requested, per Streets and Highways Code Section 36635, that the City modify the MDP.
- Section 3. Exhibits A, and B are part of this resolution.
- Section 4. The exterior boundaries of the District are shown on the "District Boundary Map" attached to this resolution as Exhibit A.
- Section 5. The modified MDP, attached as Exhibit B, is approved.

**Table of Contents:**

- Exhibit A: District Boundary Map
- Exhibit B: Modified MDP

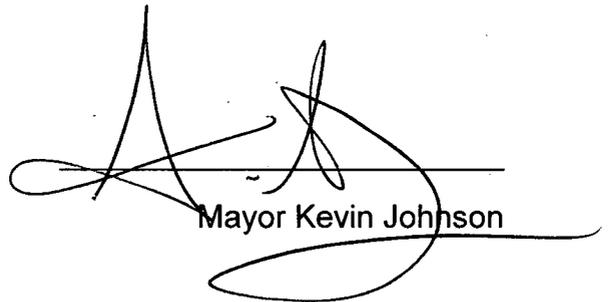
Adopted by the City of Sacramento City Council on August 21, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

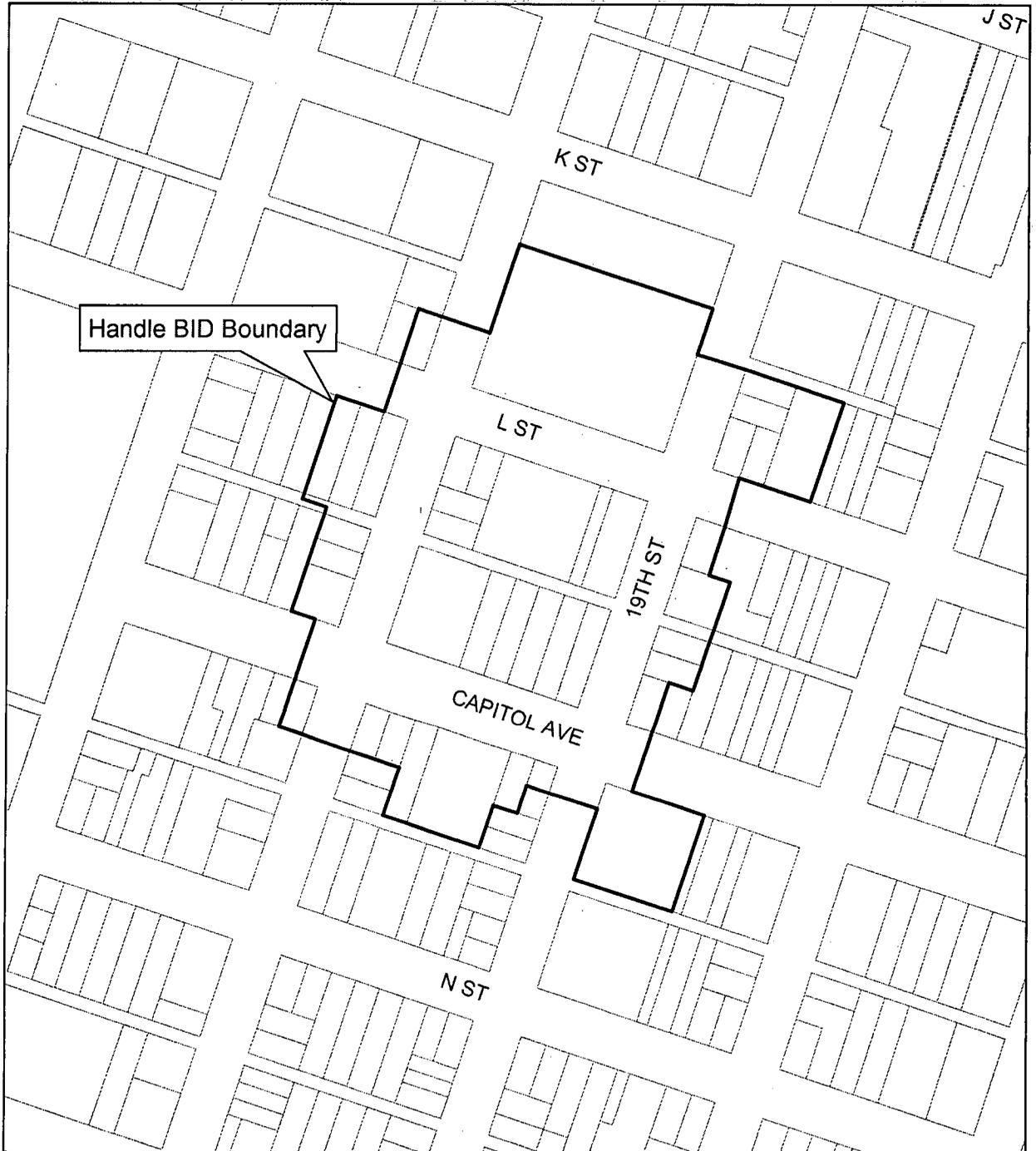
Attest:



Shirley Concolino, City Clerk

Boundary Map

Handle Business Improvement District No. 2011-04



**EXHIBIT B**

**HANDLE BUSINESS IMPROVEMENT DISTRICT NO. 2011-04  
MDP**

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# HANDLE BUSINESS IMPROVEMENT DISTRICT

## MANAGEMENT DISTRICT PLAN

District No. 2011-04

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*Formed pursuant to the Property and Business Improvement District Act of 1994  
(Streets and Highways Code §36600 et seq.)*

*Submitted to*

Handle District Business Owners

*June 21, 2012*

by



# HANDLE BUSINESS IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

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## I. INTRODUCTION AND OVERVIEW

Developed by Handle in Midtown Business Owners (HBO), the Handle Business Improvement District (HBID) is a benefit assessment district proposed to help fund marketing, improvements and sales promotion efforts for Handle District businesses. This approach has been used successfully in other destination areas throughout the country to improve restaurant and retail sales.

**Location:** The proposed HBID includes all restaurant and retail businesses, which includes restaurants, bars, nightclubs, diners and all other businesses that sell prepared food, retail businesses, and personal care businesses located within and around the boundaries of 18<sup>th</sup> Street, 19<sup>th</sup> Street, L Street and Capitol Avenue in Sacramento, California.

**Services:** Marketing, sales promotions, security and improvements to increase restaurant and retail sales and market assessed businesses in the Handle District.

**Budget:** The total HBID annual budget for each year of its five (5) year operation is anticipated to be approximately \$200,000. The budget may vary depending upon the level of gross sales.

**Cost:** Annual assessment rates are as follows: food and beverage businesses shall be assessed 1.5% of gross sales, excluding alcohol sales and certain items as described in Section V. Retail businesses with under \$100,000 in gross annual revenue will be assessed a flat assessment of \$25 per month. Retail businesses with \$100,000 or more in gross annual revenue will be assessed a flat assessment of \$50 per month. Business classification as "food and beverage" or "retail" shall be based on the primary business activity of each business. The business classification and the gross sales will be determined from the Business Operations Tax filings with the City of Sacramento. Certain sales shall not be included for purposes of the assessment as described in Section V.

New businesses opening during the term of the district shall not be exempt from assessment. New businesses' assessment rates shall be determined by utilizing the most current quarterly gross sales information to extrapolate the annual assessment amount.

**Formation:** BID formation requires submittal of petitions from businesses representing more than 50% of the total annual assessment followed by a City Council hearing and an opportunity for a written protest. The assessed business owners will receive notice of the public hearing by mail. If there is a majority written protest, the HBID will not be formed.

**Duration:** The proposed HBID will have a five (5) year life. It is estimated that the HBID assessment will be implemented beginning October 1, 2011 and continue until September 30, 2016. Once per year beginning on the anniversary of the formation of the district there is a 30 day period in which owners paying more than 50% of the assessment may protest and terminate the district.

## **II. WHY A BUSINESS IMPROVEMENT DISTRICT FOR THE HANDLE DISTRICT?**

There are several reasons why now is the right time to form a Business Improvement District (BID) in the Handle District; the most compelling reasons are as follows:

### **A. The Need to Maintain and Improve Upon the Handle Area's Positive Image.**

By keeping the focus on Midtown Sacramento's success as the region's foremost mixed-use urban neighborhood and advocating positive sustainable change, we can maintain and improve upon Midtown's positive image as one of the region's most livable and attractive places to work, live, and visit. The Handle District's image impacts all of our properties and businesses, retail, offices, entertainment, nonprofits, hospitals, churches, parks, and homes, and positive impressions are a driving force in Handle's development. The BID assessments would provide a stable funding source to be used for visible and effective safety, maintenance, parking and marketing services, sustaining Handle's current growth and success, and creating a support structure for future development and improvements.

### **B. The Need for a Unified Community Voice.**

As it grows and prospers, Handle will have an increasingly important role in determining community priorities, formulating policy, and managing issues and programs in Sacramento. It is critical that the Handle businesses communicate in an effective, strategic, and coherent manner in order to leverage our resources, influence ongoing policy decisions, and achieve our common goals. A BID provides the staffing and funding resources to provide that unified community voice as well as in-depth research and analysis to inform policy decisions.

### **C. The Need to Provide Supplemental Services in a Cost-effective Manner.**

The City of Sacramento is responsible for providing safety, maintenance, economic development, and parking services on a citywide basis. The District will build on those benchmark services to make the Handle District cleaner, safer, more attractive, and more productive than it has ever been. The BID will also provide unified programming and direct accountability to those who pay.

### **D. The Need for Marketing and Event Promotion.**

With the formation of the HBID the Handle area could increase its resources to help build upon existing promotional efforts. The projected annual assessment would provide the funds necessary to augment existing marketing efforts and enhance promotion, both designed to increase business opportunities for Handle businesses and event activity in the area.

### III. WHAT IS A BUSINESS IMPROVEMENT DISTRICT?

BIDs utilize the efficiencies of private sector operation in the market-based promotion of business districts. BIDs allow business owners to organize their efforts to increase sales and promotional efforts. Business owners within the district fund a BID, and those funds are used to provide services that the businesses desire and that benefit the businesses within the district.

#### **Business Improvement District services may include, but are not limited to:**

- Marketing of the Destination
- Business Promotion Activities
- Sales Lead Generation
- Infrastructure Financing

In California, BIDs are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. *The key difference between BIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

#### **There are many benefits to Business Improvement Districts:**

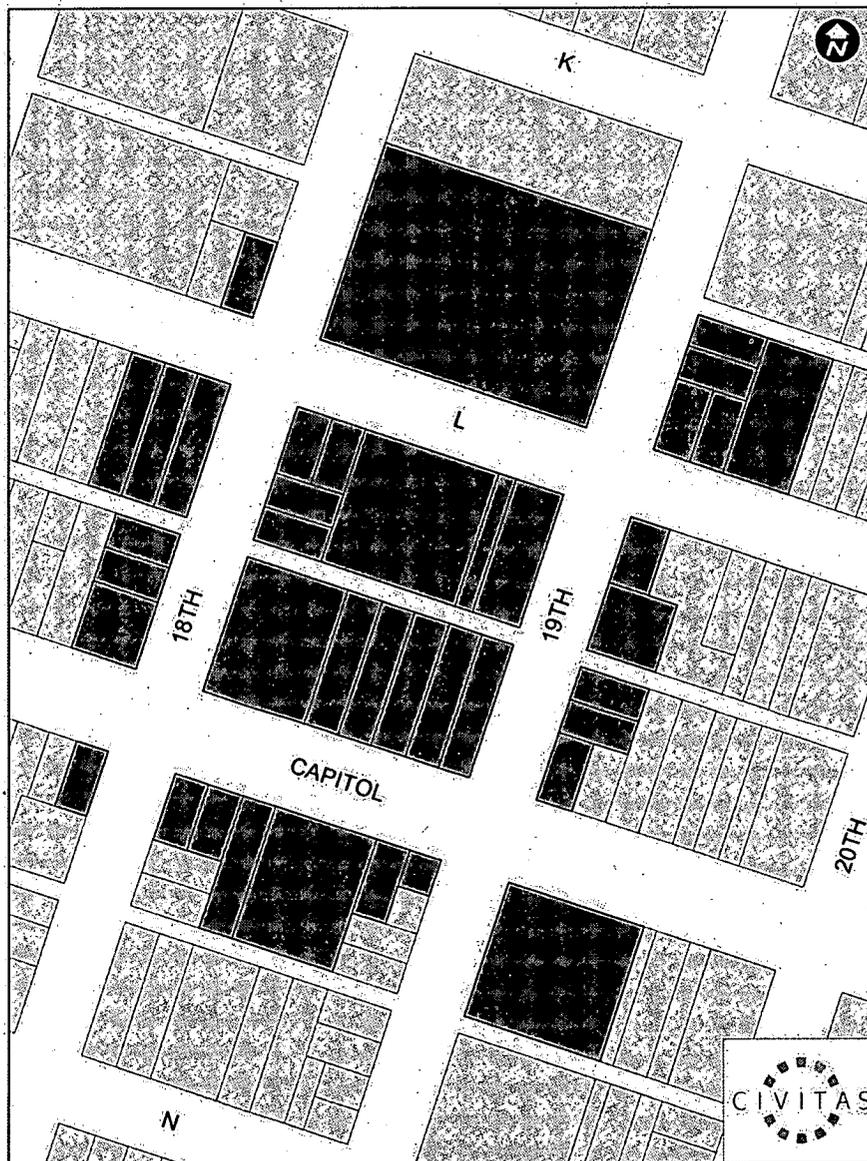
- Funds cannot be diverted for other government programs;
- Business Improvement Districts are customized to fit the needs of each district;
- They allow for a wide range of services, including those listed above;
- Business Improvement Districts are ***designed, created and governed by those who will pay*** the assessment;
- They provide a stable funding source for business promotion.

The PBID Law (AB 3754) is provided in Appendix 1 of this document.

#### IV. HANDLE BID BOUNDARY

The HBID will include all restaurant and retail businesses, existing and in the future, available for public occupancy within and around the boundaries of 18<sup>th</sup> Street, 19<sup>th</sup> Street, L Street and Capitol Avenue in Sacramento, California.

The boundary currently includes twenty-eight businesses. Please see the map below. For specific boundaries, please see the recorded Boundary Map in Book 112 of Maps of Assessment and Community Facilities Districts at Page 0013 in the Office of the County Recorder of the County of Sacramento. A complete listing of businesses within the proposed HBID can be found on Appendix 2 of this Plan.



## **V. SERVICE PLAN AND BUDGET**

### **A. Assessment**

The HBID annual assessment rates are as follows: food and beverage businesses shall be assessed 1.5% of gross sales. Retail businesses with under \$100,000 in gross annual revenue will be assessed a flat assessment of \$25 per month. Retail businesses with \$100,000 or more in gross annual revenue will be assessed a flat assessment of \$50 per month.

The assessment shall be applied to revenues coming from the sales of goods and not the sale of services, e.g. the revenue from car washes and parking lots shall not be assessed.

Food and beverage business gross sales shall not include, for purposes of the assessment: revenue generated from catering or banquet facilities, nor revenue generated from retail or re-sale products, such as branded promotional items (coffee mugs, t-shirts, etc.), bulk packaged coffee, and similar items.

Retail business revenue shall not include, for purposes of the assessment, services provided. For example, salons assessed as retail shall include in their assessable gross annual revenue from tangible items sold (hair care products, jewelry, etc.) but shall not include revenue from services provided (hair-cuts, massages, etc.). Tangible products utilized incidentally to services being provided (such as hair dyes, nail polishes, and similar items entirely utilized or applied at the business location) shall not be included in revenue for purposes of assessment.

Business classification as "food and beverage" or "retail" shall be based on the primary business activity of each business. The business classification and the gross sales will be determined from the Business Operations Tax filings with the City of Sacramento.

Food and beverages businesses shall be invoiced on a monthly basis, and retail on a quarterly basis, the estimated assessment amount due. Estimates shall be based on the average monthly reported gross revenue for the previous year, or if none is available the most recent data available. The amounts paid and owed shall be reconciled against Business Operations Tax filings or similar sources on an at least annual basis. Businesses may be invoiced if reconciliations indicate assessments were underpaid.

New businesses opening during the term of the district shall not be exempt from assessment. New businesses' assessment rates shall be determined by utilizing the most current quarterly gross sales information to extrapolate the annual assessment amount.

Bonds will not be issued.

The amount of assessment, if passed on to each customer, shall be separately stated as "Handle District Assessment" (or similar descriptive language) from the amount charged and any other applicable taxes, and each customer shall receive a receipt for payment from the business.

### **B. Determination of Specific Benefit and Direct Services**

State law requires that non-property assessments based on businesses be used to provide "a specific benefit conferred or granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the [City] of conferring the benefit," or "a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." The services in this Management District Plan ("MDP") provide specific benefit directly to payors that is not provided to those not charged. These are particular and distinct benefits to the assessed businesses which will in turn increase sales for assessed businesses within the boundaries of the District. In addition, the services and activities provided directly to the businesses, even if incidentally beneficial to the public, will not exceed the reasonable costs of providing the services and activities.

Security patrols will serve the assessed businesses within the district and coordinate with local law enforcement. Maintenance will be provided to assessed businesses, including lighting and landscaping improvements. Signage directing patrons to assessed businesses will be created. These services will not be provided to non-assessed businesses or properties within the district. Increased marketing and advertising services will be provided only to assessed businesses. Special events designed to bring increased patronage to assessed businesses will be sponsored.

### **C. Time and Manner for Collecting Assessments**

It is estimated that the HBID assessment will be implemented beginning October 1, 2011 and will continue for five (5) years until September 30, 2016. The assessment shall be billed by a 3<sup>rd</sup> party administrator on a monthly basis.

Any Assessed Business Operator in the District ("Operator") who fails to remit payment of assessments within 14 days of the due date shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.

If an Operator fails to remit any delinquent remittance within sixty (60) days, the 3<sup>rd</sup> party administrator may file a complaint against such Operator. In addition to penalties imposed, any Operator that fails to remit any assessment shall pay interest at the rate of six percent (6%) per year simple interest or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent, until paid.

For example, if a business did not pay a \$100 assessment within 14 days, a penalty of \$10 would be due in addition to the amount of the assessment ( $\$100 \times 10\% = \$10$ ). If the business did not pay the amount due until one year later, interest at the rate of 6% per year would be applied to the original assessment amount resulting in \$6 owed in interest ( $\$100 \times 6\% = \$6$ ). The total amount owed for a \$100 assessment which was not paid until a year later would be \$116.

If the 3<sup>rd</sup> party administrator determines that an Operator is delinquent, the Operator can be sent directly to collections without further review and Operator will be responsible for all late fees, interest and collection fees.

If it is determined that the nonpayment of any remittance due pursuant to this Plan is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment required to be paid.

The assessments collected shall be forwarded to the Handle District Corporation (HDC) which will have the responsibility of managing the BID programs as provided in this (MDP).

**D. Third Party Administrator**

The 3<sup>rd</sup> party administrator shall be under contract to the HDC. The contract and vendor selection shall be subject to review and approval by the City. Reports on gross sales for purposes of establishing the assessment of the District will be confidential for use by the City and for the sole purpose of establishing the assessment. Any templates or forms used by the 3<sup>rd</sup> Party Administrator for correspondence or for invoices shall be reviewed and approved by the City prior to use.

**E. Annual Service Plan**

A service plan budget has been developed to deliver services throughout the District. An annual service plan and budget will be developed and approved by the HDC Board. An estimated budget for the first year is exhibited on the next page. In the initial year of operation, a one-time fee of \$7,500 shall be paid to the City of Sacramento for its costs in setting up assessment collections. Additional administration costs include: City staff reimbursement costs are capped at \$5,000 per year (but are based on actual costs, and are subject to annual review of the adequacy of expenditure level), and an estimated \$5,000 per year for the 3<sup>rd</sup> party administrator. All City administrative costs will be accounted for in detail and in accordance with generally accepted methods for costing under Federal regulations (OMB Circulars). Costs associated with forming the HBID, specifically consultant fees, estimated at \$40,000, paid to Civitas Advisors Inc., may be reimbursed to the individuals associated with the District who paid for the respective consultant costs upfront. These one-time expenditures shall be distributed among the budget categories pro-rata.

The budget also includes a portion for contingencies and renewal of the District. Should the HDC Board approve, funds may be appropriated for the renewal effort. If there are funds remaining at the end of the District term and businesses choose to renew, these remaining funds could be transferred to the renewed District. If there are funds remaining at the end of the District and businesses choose not to renew, any remaining funds will be spent consistent with this Plan or returned to assessed businesses in equal proportion to the assessment paid by each business.

Services provided with Handle District assessment funds will be for the specific benefit of assessed businesses.

**F. Adjustments**

The HDC board has full authority to manage expenditures consistent with this Plan subject to annual approval of the District's annual report by City Council. Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget below shall remain the same except to the extent that City and 3<sup>rd</sup> party administrator actual costs vary. The HDC board shall have the authority to adjust all other budget allocations between the categories below by no more than fifteen percent (15%) per year.

**G. Service Plan Budget and Programs**

A summary of the annual service plan budget for the HBID is provided below. The total five year improvement and service plan budget is projected at approximately \$200,000 annually, or \$1,000,000

through 2016.

**Service Plan Budget Summary - Calendar Years 2011 - 2016**

Service	Year 1 Percent	Year 1 Amount	Year 2-5 Percent	Year 2-5 Amount
<b>Clean and Safe Programs</b>	30%	\$60,000	45%	\$90,000
<b>Marketing, Advertising and Special Events</b>	27%	\$54,000	35%	\$70,000
<b>Administrative and Operations</b>	8%	\$16,000	10%	\$20,000
<b>Assessment Collection</b>	5%	\$10,000	5%	\$10,000
<b>Contingency/Renewal</b>	3.75%	\$7,500	5%	\$10,000
<b>Formation – consultant</b>	22.5%	\$45,000	0	0
<b>Formation – city set-up</b>	3.75%	\$7,500	0	0
<b>TOTALS</b>	<b>100%</b>	<b>\$200,000</b>	<b>100%</b>	<b>\$200,000</b>

**Clean and Safe Programs**

Clean and safe programs will be designed to provide targeted services to assessed businesses. Security patrols will serve the assessed businesses within the district and coordinate with local law enforcement. Maintenance will be provided to assessed businesses, including lighting and landscaping improvements. Handle District signage directing patrons to assessed businesses will be created. Clean and safe programs will have the ultimate goal of improving the business environment for assessed businesses to create an increase in business revenue for those businesses. Clean and safe services will not be provided to non-assessed businesses or properties within the district.

**Marketing, Advertising and Special Events**

Increased marketing and advertising services will be provided to assessed businesses. Only assessed businesses will be featured in marketing and advertising programs promoting the area. Collateral materials promoting the assessed businesses will be created. Special events designed to bring increased patronage to assessed businesses will be sponsored. Only assessed businesses will receive marketing, advertising and special event sponsorship services. Businesses and parcels that are not assessed will not receive marketing, advertising or special event sponsorship services.

**Administrative / Operations**

The administrative and operations budget will fund insurance, office, legal and accounting expenses that will be incurred to provide Handle District services.

**Assessment and Collection Expenses**

The assessment will be collected from businesses by a third-party administrator. The third party administrative costs will be determined through competitive bid. City expenses will be at cost.

**Contingency / Renewal**

A prudent portion of the budget will be set aside for contingencies, including fluctuations in revenue and unanticipated increases in program costs. If there are funds remaining at the expiration of the district and businesses wish to renew the district, funds may be used for the costs of renewing the district.

**Formation Fees**

In the initial year of operations the costs of formation may be reimbursed or directly paid.

## **VI. BID GOVERNANCE**

### **A. Handle Business Improvement District Corporation Governance**

The HDC will serve as the Owners' Association for the HBID. The HDC will have seven board members: four (4) restaurant owners, one (1) property owner, and two (2) other business owners. Board members may be the owner of a business or property or the owners' designated representative.

### **B. Brown Act and California Public Records Act Compliance**

The Owner's Association of a BID is considered a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the HDC board must be held in compliance with the public notice and other requirements of the Brown Act. The owners' association of a BID is also required to comply with the record keeping requirements of the California Public Records Act.

### **C. Annual Report**

The HDC board shall present an annual report by November 1 of every year beginning calendar year 2012 to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1).

# **APPENDIX 1 – THE PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994**

## **STREETS AND HIGHWAYS CODE SECTION 36600 et seq.**

\*\*\* THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, \*\*\*  
AND 7, AND URGENCY LEGISLATION THROUGH CH 4 OF THE 2010 REGULAR SESSION

### **§ 36600. Citation of part**

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

### **§ 36601. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

### **§ 36602. Purpose of part**

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within a business improvement area. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

### **§ 36603. Preemption of authority or charter city to adopt ordinances levying assessments**

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from

those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

**§ 36603.5. Part prevails over conflicting provisions**

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

**§ 36604. Severability**

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

**§ 36605. [Section repealed 2001.]**

**§ 36606. "Assessment"**

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

**§ 36607. "Business"**

"Business" means all types of businesses and includes financial institutions and professions.

**§ 36608. "City"**

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with *Section 6500*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*, the public member agencies of which includes only cities, counties, or a city and county.

**§ 36609. "City council"**

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

**§ 36610. "Improvement"**

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

**§ 36611. "Property and business improvement district"; "District"**

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

**§ 36612. "Property"**

"Property" means real property situated within a district.

**§ 36613. "Activities"**

"Activities" means, but is not limited to, all of the following:

- (a) Promotion of public events which benefit businesses or real property in the district.
- (b) Furnishing of music in any public place within the district.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Activities which benefit businesses and real property located in the district.

**§ 36614. "Management district plan"; "Plan"**

"Management district plan" or "plan" means a proposal as defined in Section 36622.

**§ 36614.5. "Owners' association"**

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with *Section 54950*) of *Part 1 of Division 2 of Title 5 of the Government Code*), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with *Section 6250*) of *Division 7 of Title 1 of the Government Code*), for all documents relating to activities of the district.

**§ 36615. "Property owner"; "Owner"**

"Property owner" or "owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. The city council has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this subdivision requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient.

**§ 36616. "Tenant"**

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

**§ 36617. Alternate method of financing certain improvements and activities; Effect on other provisions**

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

## **§ 36620. Establishment of property and business improvement district**

A property and business improvement district may be established as provided in this chapter.

### **§ 36620.5. Requirement of consent of city council**

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

### **§ 36621. Initiation of proceedings; Petition of property or business owners in proposed district**

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

**§ 36622. Contents of management district plan**

The management district plan shall contain all of the following:

(a) A map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements and activities proposed for each year of operation of the district and the maximum cost thereof.

(e) The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

(l) Any other item or matter required to be incorporated therein by the city council.

### **§ 36623. Procedure to levy assessment**

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with *Section 53753 of the Government Code*.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with *Section 54954.6 of the Government Code*, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners of businesses in the proposed district which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

### **§ 36624. Changes to proposed assessments**

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

### **§ 36625. Resolution of formation**

(a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties or businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

#### **§ 36626. Resolution establishing district**

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

**§ 36626.5. [Section repealed 1999.]**

**§ 36626.6. [Section repealed 1999.]**

**§ 36626.7. [Section repealed 1999.]**

#### **§ 36627. Notice and assessment diagram**

Following adoption of the resolution establishing the district pursuant to Section 36625 or 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. If the assessment is levied on businesses, the text of the recorded notice shall be modified to reflect that the assessment will be levied on businesses, or specified categories of businesses, within the area of the district. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

**§ 36628. Establishment of separate benefit zones within district; Categories of businesses**

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

**§ 36628.5. Assessments on businesses or property owners**

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

**§ 36629. Provisions and procedures applicable to benefit zones and business categories**

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

**§ 36630. Expiration of district; Creation of new district**

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and a new district established pursuant to this part.

**§ 36631. Time and manner of collection of assessments; Delinquent payments**

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution establishing the management district plan described in Section 36622. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

**§ 36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property**

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement

district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

#### **§ 36633. Time for contesting validity of assessment**

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

#### **§ 36634. Service contracts authorized to establish levels of city services**

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

#### **§ 36635. Request to modify management district plan**

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

#### **§ 36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention; Modification of improvements and activities by adoption of resolution after public hearing**

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public meetings and public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public meeting.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public meeting, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

**§ 36637. Reflection of modification in notices recorded and maps**

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

**§ 36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments**

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with *Section 6584*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625; set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

**§ 36641. [Section repealed 2001.]**

**§ 36642. [Section repealed 2001.]**

**§ 36643. [Section repealed 2001.]**

**§ 36650. Report by owners' association; Approval or modification by city council**

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

**§ 36651. Designation of owners' association to provide improvements and activities**

The management district plan may, but is not required to, state that an owners' association will provide the improvements or activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

**§ 36660. Renewal of district; Transfer or refund of remaining revenues; District term limit**

(a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

**§ 36670. Circumstances permitting disestablishment of district; Procedure**

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property or of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

**§ 36671. Refund of remaining revenues upon disestablishment of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district**

(a) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

## APPENDIX 2 –BUSINESSES TO BE ASSESSED WITHIN THE HBID

<u>Businesses in the Handle District</u>	<u>Assessment Category</u>	<u>Situs Address</u>
HARV'S METRO CAR WASH	Retail	1901 L ST
FACE IT SALON	Retail	1122 19TH ST
MONSTER INK TATTOO STUDIO	Retail	1801 L ST 117
YOGURTAGOGO	Food & Beverage	1801 L ST 90
CAREN TEMPLET INC.	Retail	1801 L ST 80
TREYBCAKES	Food & Beverage	1801 L ST 70
GINGER ELIZABETH CHOCOLATES	Retail	1801 L ST 60
FACE IT #2	Retail	1801 L ST #40
BUCKHORN GRILL / PICK APPLE LLC	Food & Beverage	1801 L ST 10
AMITHYST BOUTIQUE SALON	Retail	1124 18TH ST
ZANZIBAR GALLERY	Retail	1731 L ST
THE BEAD FETISH	Retail	1725 L ST
CREPEVILLE	Food & Beverage	1730 L ST
OLD SOUL CO.	Food & Beverage	1716 L ST (ALLEY)
AIOLI BODEGA ESPANOLA	Food & Beverage	1800 L ST
SCOUT LIVING LLC.	Retail	1215 18TH ST
58 DEGRESS AND HOLDING COMPANY	Food & Beverage	1217 18TH ST
ZOCALO	Food & Beverage	1801 CAPITOL AVE
THE PRESS	Food & Beverage	1809 CAPITOL AVE
JAVA CITY DOWNTOWN	Food & Beverage	1800 CAPITOL AVE
PAESANO'S	Food & Beverage	1806 CAPITOL AVE
LADYBUGGZ	Retail	1903 CAPITOL AVE B
HEART CLOTHING BOUTIQUE	Retail	1903 CAPITOL AVE
FELICIA STRATI	Retail	1901 CAPITOL AVE
DEVINE GELATERIA	Food & Beverage	1221 19TH ST
LA TAVOLA	Retail	1221 19TH ST
MULVANEY'S B & L	Food & Beverage	1215 19TH ST 100
CHIPOTLE MEXICAN GRILL	Food & Beverage	1831 CAPITOL AVE

Information is as of June 2012. Businesses may change over time. As a result in the change in businesses over time, the amount of assessments collected and associated HBID budget may vary.