

Meeting Date: 3/1/2016

Report Type: Consent

Report ID: 2016-00108

Title: Ordinance Amendment: Delegating Authority to County to Collect Business Assessments (Passed for Publication 02/23/2016; Published 02/26/2016)

Location: Districts 5 and 6

Recommendation: 1) Pass an Ordinance amending Section 3.100.090 and 3.112.090 of the City Code, delegating authority to the County of Sacramento to collect Business Assessments; and 2) pass a Resolution authorizing the execution of a memorandum between the County of Sacramento and the City of Sacramento, allowing for the collection of Business Improvement Assessments.

Contact: Sini Makasini, Administrative Analyst, (916) 808-7967; Mark Griffin, Special Districts Manager, (916) 808-8788, Finance Department

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Schedule of Proceedings
- 4-Ordinance (Redline)
- 5-Ordinance (Clean)
- 6-Resolution
- 7-Exhibit A MOU

City Attorney Review

Approved as to Form
Michael W. Voss
2/24/2016 9:49:42 AM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 2/16/2016 3:40:28 PM

Description/Analysis

Issue Detail: The City currently participates in two Business Improvement Areas (BIAs), which include businesses in both the City and the unincorporated County of Sacramento (County), the Franklin Boulevard BIA and for the Stockton Boulevard BIA. BIA assessments from businesses within City limits are collected as part of the City's Business Operation Tax (BOT) remittance process. Delinquencies are controlled by way of the BOT renewal process. However, businesses located in the unincorporated area of the county are "hand-billed," which results in a higher rate of delinquency and enforcement challenges as these businesses are located outside City limits. In this case, the County would be a more appropriate agency to manage collections in these areas. Therefore, the proposed amending ordinance creates the option to enter into an agreement with the County to collect BIA assessments from businesses located in the unincorporated county. An agreement would authorize the County to collect unpaid assessments, and allow remedies that are consistent with local, state, and federal law, including but not limited to the use of collection techniques and the filing of small claims actions.

Policy Considerations: The proposed ordinance was considered by the Law and Legislation Committee on May 20, 2014. The Committee recommended the proposal be forwarded to the City Council for consideration. After several years of negotiation between the City and County, the details of collections have been solidified and presented in a memorandum of understanding agreement (MOU) attached as Exhibit A to the resolution. The recommended actions will enhance the ability to collect BIA assessments within the unincorporated area of the county potentially increasing the collection of BIA assessments.

Environmental Considerations: The amending ordinance process does not constitute a "project" under the California Environmental Quality Act (CEQA), and is exempt from CEQA review (see CEQA Guidelines Sections 15378 (b)(2) and 15378 (b)(5)).

Rationale for Recommendation: Amending the ordinance will enable the County to collect BIA assessments upon businesses located in the unincorporated area of the county.

Financial Considerations: It is anticipated that the amending ordinance will increase the collections of BIA assessments for the Franklin Boulevard BIA (Fund 2212) and for the Stockton Boulevard BIA (Fund 2215).

Local Business Enterprise (LBE): Not applicable.

BACKGROUND

Currently, the City participates in two Business Improvement Areas (BIAs) that include businesses in both the City and the unincorporated county. Approximately 30%, or 135 of the Franklin Boulevard BIA's businesses are located outside of City limits, while in the Stockton Boulevard BIA approximately 10% of the businesses, 25 are located outside city limits.

In comparison to the businesses located within the City, the businesses outside the City have higher rates of delinquencies due to their "hand-billed" process. For both BIA's, we are estimating a delinquency rate of 45% within the unincorporated County. In order to help capture lost revenue, the proposed amending ordinance creates the option to enter into an agreement with the County to collect BIA assessments from businesses located in the unincorporated County. In this case, the County would be the more appropriate agency to manage collections in these areas due to their existing resources under their own jurisdiction.

SCHEDULE OF PROCEEDINGS

Ordinance Amending City Code Section 3.100.090 and 3.112.090

May 20, 2014 Law and Legislation Committee

February 23, 2016 City Council – Pass for Publication

March 1, 2016 City Council – Adopt Amending Ordinance

ORDINANCE NO. 2016-xxx

Adopted by the Sacramento City Council

March __, 2016

AN ORDINANCE AMENDING SECTIONS 3.100.090 AND 3.112.090 OF THE SACRAMENTO CITY CODE RELATING TO COLLECTION OF BUSINESS ASSESSMENTS IN THE FRANKLIN BOULEVARD AND STOCKTON BOULEVARD BUSINESS IMPROVEMENT AREAS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Section 3.100.090 of the Sacramento City Code is amended to read as follows:

3.100.090 Payment of charge—Effective date.

The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business operations tax under Chapter 3.08 ~~of this code, commencing January 2, 1986.~~ The city may enter into an agreement to delegate authority to the county of Sacramento to collect the charges imposed upon businesses located in the unincorporated area of the county of Sacramento. Thereafter, the county of Sacramento shall be authorized to collect unpaid assessments using collection techniques that are consistent with local, state, and federal law.

A special fund is created, known as the “Franklin Boulevard business improvement area fund,” and the charges imposed by this chapter shall be deposited in such fund.

SECTION 2

Section 3.112.090 of the Sacramento City Code is amended to read as follows:

3.112.090 Payment of charge—Effective date.

The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business operations tax under Chapter 3.08 ~~of this code, commencing January 2, 1986.~~ The city may enter into an agreement to delegate authority to the county of Sacramento to collect the charges imposed upon businesses located in the unincorporated area of the county of Sacramento. Thereafter, the county of Sacramento shall be authorized to collect unpaid assessments using collection techniques that are consistent with local, state, and federal law.

A special fund is created, known as the "Stockton Boulevard business improvement area fund," and the charges imposed by this chapter shall be deposited in such fund.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

MAYOR

Attest:

City Clerk

Passed for Publication:

Published:

Effective:

ORDINANCE NO. 2016-xxx

Adopted by the Sacramento City Council

March __, 2016

**AN ORDINANCE AMENDING SECTIONS 3.100.090 AND 3.112.090 OF THE
SACRAMENTO CITY CODE RELATING TO COLLECTION OF BUSINESS
ASSESSMENTS IN THE FRANKLIN BOULEVARD AND STOCKTON BOULEVARD
BUSINESS IMPROVEMENT AREAS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Section 3.100.090 of the Sacramento City Code is amended to read as follows:

3.100.090 Payment of charge—Effective date.

The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business operations tax under Chapter 3.08. The city may enter into an agreement to delegate authority to the county of Sacramento to collect the charges imposed upon businesses located in the unincorporated area of the county of Sacramento. Thereafter, the county of Sacramento shall be authorized to collect unpaid assessments using collection techniques that are consistent with local, state, and federal law.

A special fund is created, known as the “Franklin Boulevard business improvement area fund,” and the charges imposed by this chapter shall be deposited in such fund.

SECTION 2

Section 3.112.090 of the Sacramento City Code is amended to read as follows:

3.112.090 Payment of charge—Effective date.

The collection of the charges imposed hereunder shall be made at the same time and in the same manner as the general business operations tax under Chapter 3.08. The city may enter into an agreement to delegate authority to the county of Sacramento to collect the charges imposed upon businesses located in the unincorporated area of the county of Sacramento. Thereafter, the county of Sacramento shall be authorized to collect unpaid assessments using collection techniques that are consistent with local, state, and federal law.

A special fund is created, known as the "Stockton Boulevard business improvement area fund," and the charges imposed by this chapter shall be deposited in such fund.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

MAYOR

Attest:

City Clerk

Passed for Publication:

Published:

Effective:

RESOLUTION NO.

Adopted by the Sacramento City Council

AUTHORIZATION TO EXECUTE MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF SACRAMENTO REGARDING THE COLLECTION OF BUSINESS IMPROVEMENT AREA ASSESSMENTS FOR BUSINESSES LOCATED IN THE UNINCORPORATED COUNTY

BACKGROUND:

- A. The City currently participates in Businesses Improvement Areas (BIAs) that include businesses located in both the city and the unincorporated county. Currently, BIA assessments from businesses within City limits are collected as part of the City's Business Operation tax (BOT) remittance process. Businesses located in the unincorporated area of the county are "hand-billed," which results in a higher rate of delinquency and enforcement challenges as these businesses are located outside City limits.

- B. The County of Sacramento would be a more appropriate agency to manage collections in the unincorporated county areas. Therefore, the attached Memorandum of Understanding (MOU) attached as Exhibit A, would allow delegation authority to the County for the collections of unpaid BIA assessments.

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

Section 1 The Memorandum of Understanding (MOU) attached as Exhibit A is approved and the City Manager is authorized to execute the MOU with the County of Sacramento.

Section 2 Exhibit A is part of this resolution.

Table of Contents:

Exhibit A – Memorandum of Understanding

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SACRAMENTO AND THE COUNTY OF SACRAMENTO REGARDING THE COLLECTION OF BUSINESS IMPROVEMENT AREA ASSESSMENTS FOR BUSINESSES LOCATED IN THE UNINCORPORATED COUNTY

This Memorandum of Understanding ("MOU"), dated for reference purposes as March __, 2016, is made by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as "County", and the City of Sacramento, a charter municipal corporation, hereinafter referred to as "City".

RECITALS

- A. The City has established two business improvement areas, the Franklin Boulevard Business Improvement Area and the Stockton Boulevard Business Improvement Area (collectively "the BIAs") that include businesses located in both the City and the unincorporated County. The County has consented to the establishment of the BIAs.
- B. This MOU is entered into between City and County for the purpose of delegating authority to the County for collection of unpaid BIA assessments and late fees from businesses located in the unincorporated County.

AGREEMENT

Now, therefore, City and County agree as follows:

1. Legislative Authority.

In order to initiate the delegation of authority, City will revise the implementing ordinance for the BIAs to allow the collection of assessments and late fees by the County in the unincorporated County. This MOU shall become effective for a BIA only when the City has revised the BIA implementing ordinance and notified the County in accordance with Section 5 below. This MOU does not affect current City practices for collection of BIA assessments.

2. City Responsibilities.

a. City staff shall send the initial bills for BIA assessments to the businesses located in the unincorporated County that have been identified by the BIA. City staff shall then cause to be provided, either through its own efforts or the BIA's efforts, information necessary for County to calculate the amount of the assessments and late fees owed by businesses located in the unincorporated

County, including the assessment rate and methodology and the identity of the financially responsible entities.

3. County Responsibilities.

a. County, through its Department of Revenue Recovery, shall engage in formal and informal collections efforts with respect to BIA assessments for businesses located in the unincorporated County that are identified by the BIA, including but not limited to billing, cashiering, as well as obtaining and enforcing judgments on delinquencies. The initial billing date shall be that date as coordinated by and between County's Director of Revenue Recovery or her designee and the City Manager or his designee.

b. Payments received by County or City for amounts referred to County, shall be applied to the unpaid assessments and late fees on a pro-rata basis.

1. Payments received by City shall be reported to County designee within two business days to prevent collection actions that would not otherwise occur had County known payment was received.

2. Late fees collected by City or County shall be used to offset the cost of the County's collection services.

i. County may reduce remittances to City by amount of late fees received by City.

c. County shall, within 90 days of receiving the funds, remit the invoiced amounts to City at the address listed below:

City of Sacramento
Revenue Division
915 I Street, Room 1201
Sacramento, CA 95814

d. County will keep full and accurate accounting records of all funds collected on behalf of the BIAs. County shall maintain in accordance with recognized accounting practices and for a period of three years after the collection of the funds, all records pertaining to its collection activities. County shall provide a list of delinquent accounts to City by November of each year unless otherwise mutually agreed upon by the parties.

4. Amendments.

This MOU may be amended only in writing, signed by both parties.

5. Notices.

Any notice or other correspondence to a party to this MOU shall be deemed given on the date it is placed in the United States mail, first class, postage prepaid, and addressed to the party at the following address:

Notices to City:

Public Improvement Finance
New City Hall
915 I Street, 3rd Floor
Sacramento, CA 95814
Attn: Sini Makasini

Notices to County:

Connie Ahmed, Director
Department of Revenue Recovery
700 H Street, Room 6750
Sacramento, CA 95814

6. Indemnification.

City shall defend, indemnify and hold harmless County, its officers and employees, from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, whether incurred by County's staff attorneys or outside attorneys, arising out of or resulting from the performance of this MOU, caused in whole or in part by the negligent or intentional acts or omissions of City, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

County shall defend, indemnify and hold harmless City, its officers and employees from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, whether incurred by City's staff attorneys or outside attorneys, arising out of or resulting from the performance of this MOU, caused in whole or in part by the negligent or intentional acts or omissions of County, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

It is the intention of City and County that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, invitees, subconsultants or subcontractors. It is also the intention of City and County that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers,

directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors. Each party to this MOU agrees to provide the other party written notification within 30 days of receipt of any claim or lawsuit arising from this MOU.

7. Effective Date.

This MOU shall be effective upon the date it is fully executed by both parties.

8. Termination.

Both parties shall have the right to terminate this MOU upon 30 days advance written notice to the other party.

IN WITNESS WHEREOF, the parties hereby execute this Memorandum of Understanding.

COUNTY OF SACRAMENTO

CITY OF SACRAMENTO

By: _____
Director of Revenue Recovery

By: _____
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
County Counsel

By: _____
City Attorney

ATTEST

By: _____
City Clerk