



Request for City Council Committee Action from the Department of Public Works

Date: December 2, 2008

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Referral: Honorable Paul Ostrow, Chair Ways and Means / Budget Committee

Subject: **Downtown Business Improvement Special Service District, Public Hearing.**

Recommendation:

Passage of an ordinance establishing the Downtown Business Improvement Special Service District pursuant to Minnesota Statute Chapter 428A.01-.101, and authorize the proper City officers to negotiate and execute a contract with the Minneapolis Downtown Council, its subsidiary or an approved assignee (hereafter the "District Entity") for the management and service provision in the proposed District, and negotiate a Memorandum of Understanding with the District Entity regarding the current level of City services provided in downtown. This ordinance may be authorized for summary publication.

Previous Directives: None.

Prepared by:

Pierre Willette, Intergovernmental Relations Department
Michael D. Kennedy, P.E., Director, Transportation Maintenance & Repair

Approved by:

Steven A. Kotke, P.E.
City Engineer/Director of Public Works

Steven Bosacker
City Coordinator

Presenters in Committee:

Michael D. Kennedy, P.E. Director, Transportation Maintenance and Repair,
Pierre Willette, Intergovernmental Relations Department

Financial Impact

- Action is within the Business Plan
- Other financial impact: See background information.

Community Impact

- City Goals: A premier destination; visitor investment and vitality. Strategic Direction: Cleaner, greener, safer downtown.
- Comprehensive Plan

Supporting Information:

The Establishment of the District:

For many years, the downtown business community and the City have discussed the idea of creating a Special Service District to further enhance the vitality of downtown Minneapolis. The Downtown Council has championed the effort to create a "Cleaner, Greener, Safer Downtown" using the public-private partnership model of districts that have been successful in many other peer cities across the country. The Downtown Council and City have collaborated to work pursuant to State Statute 428A that enables Special Service Districts to create the Downtown Business Improvement Special Service District, commonly called the Minneapolis Downtown Improvement District (DID).

The DID, as proposed, is described in the attached legal description and map. The DID encompasses approximately 120 square blocks and is made up of approximately 650 assessable parcels. The DID is roughly bounded by 2nd Avenue North, 2nd Street South, Chicago Avenue, and various streets along the southern edge of downtown.

The Downtown Council has exceeded the statutorily required obligations for petitioning of the affected property owners (see attached sample petition and verification letter).

An ordinance to establish such a district for the area was introduced at the Council meeting on November 7, 2008 for its first reading and referred to the Transportation and Public Works Committee for a public hearing.

Implementation via Public-Private Partnership:

Like existing special service districts, the City will retain oversight of the activities of the DID. Unlike existing special service districts, the City will enter into a public-private partnership with the District Entity for implementation of DID services. The legal form of this partnership will be executed via a single professional services contract between City and the District Entity. Key attributes of this public-private partnership are listed below.

The City shall:

- Use its authority under MN Statute 428A to impose service charges on eligible property within the DID. The City will use these service charges to fund the contract with the District Entity.
- Review and approve an annual operating plan and budget for the DID.
- Monitor overall performance of annual DID operating plans.
- Review the District Entity's independently audited financial statements to ensure compliance with annual operating plans and budgets.
- Allocate City staff to serve on operating committees to coordinate the DID services with on-going City services.

The District Entity shall:

- Provide all direct day-to-day management and operation of the DID.

- Be responsible for all administrative management of services contracts including specification, procurement, contract management, vendor oversight and payment.
- Be governed by a management board of approximately twenty members including property owners, business owners and others who represent organizations downtown. Approximately 50% of the board will represent the properties that pay into the DID geographically, by property type, and by property size and will utilize the board member's expertise in implementing services to raise the standard of property. Approximately 50% of the board will be representatives of the employee and visitor audiences for whom the services will be geared, many of whom will also pay for the services indirectly through their lease costs.
- Work with property owners to develop an annual operating plan and budget.
- Be responsible for communicating and coordinating service delivery with property owners within the DID.

Public Works does not presently have the financial or staff capacity to directly manage the services for a district of this size and scope.

Types of Services:

The proposed ordinance outlines the categories of services that will be performed within the DID and are described in more detail in the draft operating plan (attached). Services fall within three major categories: cleaning, greening and safety. In keeping with the requirements of the enabling legislation, DID services will only include work above and beyond what is currently done by the City throughout downtown.

Existing service districts:

The Advisory Boards of the Nicollet Mall Pedestrian Mall and Hennepin Theater District Special Service District have indicated that they intend to advise the City Council that once the DID is established, they will opt to receive the services they need and desire via the DID. Therefore, their current operating districts will "go dormant." That is, their enabling Ordinances will remain intact, but they will not submit annual budgets and service requests to the Council and City Engineer. Public Works would support this as there is still provision for maintenance of enhanced streetscape in the respective districts.

Requested Exemptions from City Ordinances:

In keeping with the downtown business community's desire to have the DID managed more like other Business Improvement Districts in the country, the Downtown Council is asking for exemptions from certain City ordinances and procedures that they believe hinder optimal procurement of services for an endeavor of this scope and magnitude. They also feel the exemptions are necessary for them to ensure the business community support to move forward with the DID. While they understand that these provisions are important to the Council, by creating a climate and partnership in which the business community is excited about even further financially investing greatly in downtown, they feel these accommodations will ultimately benefit both the downtown business community as well as the City as a whole. Staff has requested that if these exemptions are granted, that the exemption language would be accompanied with DID ordinance language that specifically ensures that the DID will attempt in good faith to meet the spirit of the exempted City ordinances. The following are the requested exemptions and the supporting 'best efforts' language.

- Minneapolis Code of Ordinances (“MCO”): Section 18.200 Equal Benefits provisions in contracts:

As part of this exemption the District Entity will extend any benefits offered to its employees based on marital status to employees with domestic partners registered as such pursuant to Minneapolis Code of Ordinances: Section 142.30. In addition, the District Entity will require its contractors and subcontractors to extend the same benefits to any of their employees providing services to the DID.

- MCO Section 139.50 Non-discrimination and Affirmative Action provisions in contracts:

The District Entity will have a Modified Affirmative Action Plan that meets the City Ordinance

- MCO Chapter 423 Small and Underutilized Business Enterprise program:

As part of this exemption the District Entity will, when seeking competitive bids for special services in the DID, seek bids from, but not limited to, vendors on a list of small and underutilized businesses provided annually by the City.

- MCO Section 24.220 (prevailing wage);

This exemption will not apply to any construction work that requires funding from more than one year’s assessment cycle.

Finances:

Any services provided in 2009 will be billed to the property owners by the city. Any owner not paying their costs in 2009 will be assessed for the 2010 costs as well as any unpaid balance from 2009. This is necessary because of the timing of the establishment of the DID in conjunction with Hennepin County’s assessment procedures.

Assessments for the approximately 650 assessable parcels in the DID are estimated to amount to about \$6.5 million annually (2009 will be a partial year and the budget will be pro-rated accordingly). Assessments are intended to be calculated as follows:

First, properties will be assessed by the lineal foot for those services that are directly lineal in nature such as cleaning;

Second, all properties will be assessed by gross building-area for those services that are global in nature like security ambassadors. Gross Building Area provides a common denominator among property types, e.g., hotel, parking ramp, office, etc. It also reflects the volume of space and the quantity of people within the property that drive the need for services.

Lastly, the DID will prorate costs based on the service level area in which a property is located. Currently there are three service level areas (Core, Standard Plus and Standard). Service level areas reflect the frequency of delivery of services. Service level areas may change from time to time based on changes in land use or demand.

The finance staff at the City has closely examined this proposal and has three concerns:

First, the City may have to carry costs for 2009 services not paid by certain property owners until 2010. There is no real estimate of what percentage of properties will pay in 2009, although the District Entity believes that owners of larger properties will pay in 2009 as they can typically invoice tenants for the cost of services in the year in which they were incurred and paid. Additionally, the City will impute a carry cost on the 2009 costs so that properties that pay in 2009 will be able to receive an 'early payment discount', thus motivating more to pay in 2009 and not wait until 2010. This is a one time issue since in 2010 and after, costs will be included as a service charge assessment on Hennepin County's property tax statements.

Second, there is a natural float that occurs with all special service districts as they need funds on a monthly schedule. This is normally not such a large concern because the budgets for most special service districts are rather small. However, given the size of the DID budget and the fact that City will only receive assessment payments from the county in two lump sums (June and November) there is ongoing cost to the City not currently contemplated by the ordinance. For a \$6,500,000 annual budget, the float is estimated at \$45,000+/- . Similar to the natural float that occurs with the timing of cash flows there is the issue of delinquent service charge payments which is currently estimated at 0% to 2%, an issue that exists with other service districts as well.

Lastly, there is concern that the administrative costs in the first year for the City's finance department will be rather high and the proposal currently has no mechanism for collecting an administrative charge for the work required by the City. The actual cost has not yet been quantified, but once the work flow for year one is determined, the District Entity will determine what portion it can absorb to minimize the administrative effort by the City.

It should also be noted that while the state statute establishing these districts exempts residential, government and nonprofit organizations from participation, the City, in its draft 2009 budget, has recommended up to \$350,000 to cover the 2009 cost for City owned properties within the DID. These City properties will receive benefit from the services on par with the other properties in the DID, and equally significant, this is an important and visible way to collaborate with the business community as a full paying partner. Other exempt properties may choose to opt in , and in fact, some have signed petitions in support of the district.

Memorandum of Understanding:

Also recommended is the acceptance of City Service Memorandum of Understanding (MOU) which includes descriptions of current service levels and approximate expenditures for 2008 public works and public safety services in the downtown area. These reports were prepared and provided by Public Works and public safety representatives because the Downtown Council and business owners wanted to understand what City services were already being provided, as opposed to what they might additionally pay for as "enhanced" services. These reports serve as a baseline to ensure that the DID will only pay for services that are not normally provided by the City, as well as to monitor and compare any adjustments caused by City financial, policy and resource changes that might occur in the future. In the event that the City needs to make adjustments to this baseline of basic services, the City will give notice to the District Entity, explain the reasoning and impacts

of any changes so the parties can work collaboratively and transparently in good faith to foster their mutual goals of a thriving and vital downtown. They have made it known that in order for the DID to be accepted by the downtown business community, it is important that they have some assurance that the DID will not be used to reallocate City resources, and the DID be used to make up the difference. MN Statute 428A.03 provides that "Service charges may not be imposed to finance a special service if the service is ordinarily provided by the city from its general fund revenues unless the service is provided in the district at an increased level. In that case, a service charge may be imposed only in the amount needed to pay for the increased level of service."

Term of DID and Right to Terminate:

The Ordinance includes an automatic sunset provision at the end of the District's fifth year unless the Ordinance is renewed via a successful petitioning of property owners. Additionally, the City or the District Entity have the right to terminate the agreement. Because the Nicollet Mall and Hennepin Theater District Ordinances will still be in effect, we would have the ability to restore their budgets and service delivery.

Summary:

The Downtown Council strongly believes that the DID as proposed and recommended will bring new investment into downtown given that an assumed budget of \$6 Million +/- per year equates to a \$30 Million investment over the initial five years. Staff agrees that it has that potential. In addition to improving the standards of downtown to meet the Cleaner, Greener, and Safer goals of the Minneapolis Strategic Direction, this investment will also result in downtown Minneapolis retaining and enhancing its competitive advantage in the market place as the leading economic engine for the city, state and region. Property owners, business owners, employees, visitors and residents want to be in an environment that is clean, safe and vibrant. One study of large districts in another part of the country demonstrated that commercial property values within an improvement district increased an average of 15% compared to similar properties immediately outside the district.

Recommendation:

That the City Council adopt an ordinance establishing the Downtown Business Improvement Special Service District pursuant to Minnesota Statute Chapter 428A.01-.101, and authorize the proper City officers to negotiate and execute a contract with the District Entity for the management and service provision in the proposed DID and acceptance of the Memorandum of Understanding with the District Entity regarding the current level of City services provided in downtown.

Attachments:

Map of proposed DID

Proposed Ordinance

Proposed Memorandum of Understanding

Draft Operating Plan Outline

Sample petition and verification letter