

AGENDA ITEM NO.	10:10am
COUNCIL MEETING	11/18/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

November 18, 2010

FROM: CRAIG SCHARTON, Director
Downtown and Community Revitalization Department

BY: ELLIOTT BALCH, Downtown Revitalization Manager 
Downtown and Community Revitalization Department 

SUBJECT: PUBLIC HEARING TO DISESTABLISH DOWNTOWN FRESNO BUSINESS
IMPROVEMENT AREA NO. ONE PURSUANT TO THE PARKING AND BUSINESS
IMPROVEMENT AREA LAW OF 1965

1. BILL NO. B-40 (INTRO. 10/28/10) (FOR ADOPTION) – DISESTABLISHING BUSINESS
IMPROVEMENT AREA NO. ONE AND DISCONTINUING THE LEVY OF SPECIAL
BUSINESS TAX THEREIN AND RESCINDING ORDINANCE NO. 71-124

RECOMMENDATION

Staff recommends that, at the conclusion of a hearing held pursuant to the BIA Law (California Streets and Highways Code Section 36000 et seq.), in the absence of written and oral protests by a majority of those who pay business license taxes within BIA No. One, the Council adopt Bill No. B-40 to rescind Ordinance No. 71-124 and thereby disestablish the Downtown Fresno Business Improvement Area and discontinue the levy of the special business tax therein and thereupon terminate the BIA No. One Management Agreement between the City and the Downtown Association by not later than March 31, 2011 with any remaining BIA No. One funds to be remitted to the City following closeout.

EXECUTIVE SUMMARY

The Downtown Fresno Property and Business Improvement District (PBID) was successfully formed on June 24, 2010, following petition and ballot support from downtown property owners and an affirmative vote of the City Council.

From the many conversations held with property and business owners during the process of forming the PBID, it became clear to City staff and PBID organizers that there is a desire not to “double-burden” businesses within the new PBID with the existing Business Improvement Area (BIA) assessment.

On October 28, 2010, the Council adopted Resolution 2010-236 (Exhibit A) declaring the intention to disestablish the BIA, discontinue the levy of assessments on businesses therein, and call for today’s hearing before considering adoption of Bill No. B-40 (Exhibit B) to make the disestablishment final and rescind the original legislation, Ordinance No. 71-124, that established the BIA.

If there is no majority protest at the hearing, i.e., if there are not written and oral protests by a majority of those who pay business license taxes within BIA No. One, staff recommends that the Council adopt Bill No. B-40.

BACKGROUND

Starting in 2007, the City Council authorized City funding to assist with the formation of a PBID in Downtown Fresno. The formation of the new district reached a successful conclusion with a majority petition, favorable vote of the property owners, and approval by the Council on June 24, 2010.

Portions of the PBID area, particularly on the Fulton Mall, are within the area of the existing Business Improvement Area No. 1 (BIA), which has existed since 1971 with the Downtown Association of Fresno (DTA) designated as the BIA Advisory Committee. Under an agreement with the City, the DTA has used BIA funds to provide services to the assessment area such as beautification, promotions, and economic development activities.

Unlike the PBID, which is assessed on property owners at a constant rate through their semi-annual property tax bills, the BIA is assessed only on ground-floor retailers through their City business license taxes, as a rate proportional to their reported sales. As such the BIA has a number of undesirable attributes: (1) it produces an unstable revenue stream that has declined as retail business along the Fulton Mall has suffered; (2) its collection is contingent on paying business licenses, which sometimes lapse; (3) it is assessed only on retailers, even though improvements to the downtown also benefit office and residential tenants as well as property owners; and (4) it produces very little revenue, approximately \$30,000–35,000 annually in recent years, which has accounted for only 10–15% of the DTA's budget.

The PBID assessment area includes the entire BIA assessment area, and more. Similar to the PBID, the BIA places the highest assessment on Fulton Mall retail businesses, in anticipation of services being focused on the Mall, and lower assessments and lower services for areas nearby.

In conversations with property and business owners during the process of forming the PBID, there was consensus that certain areas within the PBID should not face a "double-burden" of assessments for both the PBID and BIA. Although the PBID assessment is levied on properties, there is little doubt that the PBID assessment will be reflected in the rents many tenants pay. The PBID is already structured to include corresponding levels of assessments and services — highest on the Fulton Mall, lowest away from the Mall — without the compounding levy of the BIA assessment.

In addition, because the annual PBID assessment revenue (approximately \$600,000) is up to 20 times greater than the BIA revenue, there is a desire by the PBID steering committee to focus on managing PBID revenues instead, and provide a clear line of accountability for the PBID's performance goals to the property owners who are paying the new assessment. The DTA board, in their role as the BIA Advisory Committee, has also voted to support the attached Resolution calling for the disestablishment of the BIA.

On October 28, the Council adopted the attached Resolution No. 2010-236 declaring the intention to disestablish the BIA, discontinue the levy of assessments on businesses therein, and call for today's hearing before considering adoption of Bill No. B-40 (Exhibit B) to make the disestablishment final and rescind the original legislation, Ordinance No. 71-124, that established the BIA. Following the Resolution's adoption, pursuant to state BIA Law, each assessment-paying business within the BIA was mailed a notice of today's hearing along with a copy of Resolution No. 2010-236 and Bill No. B-40. In addition, pursuant to BIA Law, notice of today's hearing, including the text of Resolution No. 2010-236, was printed in *The Fresno Bee* on November 1, 2010.

Staff is therefore recommending that the Council hold a public hearing pursuant to BIA Law today and, following the hearing and the absence of a majority protest, i.e., in the absence of written and oral protests by a

Disestablishment of Downtown Business Improvement Area
November 18, 2010

majority of those who pay business license taxes within BIA No. One, adopt Bill No. B-40 (Exhibit B) to disestablish the BIA and discontinue the levy of the corresponding tax. Staff further recommends that, upon such disestablishment, the BIA No. One Management Agreement between the City and the Downtown Association be terminated by not later than March 31, 2011 with any BIA No. One funds remaining to be remitted to the City following closeout.

FISCAL IMPACT

The Department of Finance levies BIA assessments on retail business licenses in the affected area. The Department passes 100% of these funds through to the Downtown Association of Fresno. Therefore the disestablishment of the BIA and discontinuance of the levy will have little or no fiscal impact on the City.

The levy would continue through the end of the calendar year, as the disestablishment would become effective on December 31, 2010.

Because the BIA assessment funds are delivered to the DTA in arrears, and the DTA is responsible for the expenditure of BIA funds for BIA purposes, the BIA management contract between the City and DTA is to be extended until March 31, 2011, at which point a closeout accounting of the expenditure of the funds, and any funds remaining unspent, will be provided to the City.

Attachments:

Exhibit A — Resolution No. 2010-236 – Declaring the Intention to Rescind Ordinance No. 71-124 and Disestablish Business Improvement Area No. One and Discontinue the Levy of Special Business Tax Therein Pursuant to the Parking and Business Improvement Area Law of 1965 and Setting a Public Hearing for November 18, 2010 at 10:10 a.m.

Exhibit B — Bill No. B-40 – (For Adoption) – Disestablishing Business Improvement Area No. One and Discontinuing the Levy of Special Business Tax Therein and Rescinding Ordinance No. 71-124



RESOLUTION NO. [2010-236]

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO DECLARING THE INTENTION TO RESCIND ORDINANCE 71-124 AND DISESTABLISH BUSINESS IMPROVEMENT AREA NO. ONE AND DISCONTINUE THE LEVY OF SPECIAL BUSINESS TAX THEREIN PURSUANT TO THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1965 AND SETTING A PUBLIC HEARING FOR NOVEMBER 18, 2010 AT 10:10 A.M.

WHEREAS, the City, pursuant to its Resolution No. 72-50 and Ordinance No. 71-124 each incorporated herein, caused to be established Business Improvement Area No. One ("BIA No. One"), effective March 31, 1972, for the purpose of raising revenues through a tax on certain businesses in specified areas and zones, to be expended for the purposes specified in said BIA Law (defined below) and Section 5-405 (now Section 7-1301 et seq.) of the Fresno Municipal Code; and

WHEREAS, pursuant to an Agreement dated April 11, 1972 ("Agreement") between the City and the Downtown Association of Fresno, Inc., ("DTA"), the DTA was designated as the entity to receive, budget and expend BIA No. One funds in pursuit of eligible BIA No. One purposes and uses benefitting the Central Business District; and

WHEREAS, the DTA has been designated by the City Council as the BIA No. One Advisory Committee; and

WHEREAS, on June 24, 2010, the City Council approved establishment of a Downtown Property and Business Improvement District (PBID), which will assess areas and fund purposes and uses essentially co-extensive with BIA No. One; and

WHEREAS, the Parking and Business Improvement Area Law of 1965, (California Streets and Highway Code Section 36000 et seq.) (the "BIA Law") authorizes the City of Fresno to disestablish a Business Improvement Area ("BIA") within the City of Fresno, by ordinance, following adoption of a resolution of intention to disestablish at least 15 days prior to hearing thereon, stating the time and place of such hearing, and notice thereof by both (i) one publication of the resolution of intention in a newspaper of general circulation in the City, and (ii) mailing a complete copy of the resolution of intention to each business in BIA No. One, with such noticing to be completed at least 10 days prior to the time of the Council hearing; and

WHEREAS, the City desires to declare its intention to rescind Ordinance No. 71-124, to disestablish BIA No. One including all areas and zones, and to discontinue all levies of special business tax therein by not later than December 31, 2010, upon the terms and conditions herein, in furtherance of the City Council's goals of creating jobs, assisting new business and supporting existing business within the City; and

Adopted _____
Approved _____
Effective _____

10-28-10



WHEREAS, the Agreement may be terminated by either party as of the end of any calendar quarter upon at least 30 days prior notice, and the parties declare their intention to terminate the Agreement following BIA closeout and final accounting by not later than March 31, 2011, as provided in this resolution, whereupon any and all BIA No. One funds held by the DTA shall be repaid to the City for such disposition as Council may approve; and

WHEREAS, on October 26, 2010, the DTA reviewed and approved this resolution.

NOW, THEREFORE, BE IT RESOLVED that the above recitals are true and correct, and the City Council of the City of Fresno so finds and determines; and be it

FURTHER RESOLVED the public interest, convenience, and necessity require and the City Council of the City of Fresno declares its intention to rescind Ordinance No. 71-124, to disestablish BIA No. One and to discontinue all levies of special business tax therein by ordinance introduced concurrently herewith, all effective not later than December 31, 2010, and to terminate the Agreement upon closeout and final accounting effective not later than March 31, 2010, the City Council of the City of Fresno sets the time and place for a public hearing thereon, on November 18, 2010 at 10:10 A.M., in City Council Chambers, 2600 Fresno Street, Fresno, California; and be it

FURTHER RESOLVED said City Council of the City of Fresno does hereby authorize the City Manager to cause publication and notification of the foregoing, in conformance with the BIA Law and this resolution; and be it

FINALLY RESOLVED this Resolution shall take effect upon its final adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the [28th] day of [October], 2010.

AYES : Eorgeas, Brand, Dages, Perea, Sterling, Xiong, Westerlund

NOES : None

ABSENT : None

ABSTAIN : None

REBECCA E. KLISCH
City Clerk

By: Rebecca E Klisch
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: R 10-12-10
Robert R. Coyle Date
Senior Deputy

RRC:elb [54183elb/rrc] Resolution

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY _____ SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
RESCINDING ORDINANCE NO. 71-124, DISESTABLISHING
BUSINESS IMPROVEMENT AREA NO. ONE AND
DISCONTINUING THE LEVY OF A SPECIAL BUSINESS TAX
THEREIN

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. The Council hereby declares and determines as follows:

(a) Pursuant to Streets and Highways Code of the State of California, Sections 36000 et seq., and Article 13 of Chapter 7 of the Fresno Municipal Code, this Council heretofore adopted its Resolution of Intention entitled "Resolution of the Council of the City of Fresno Declaring the Intention to Rescind Ordinance No. 71-124, Disestablish Business Improvement Area No. One (BIA No. 1) and Discontinue the Levy of Special Business Tax Therein and setting the Time and Place of Hearing Thereon, and caused said Resolution to be duly published and mailed as provided by law.

(b) A public hearing concerning the disestablishment of BIA No. One and discontinuance of the levy of special business tax therein was held on the 18th day of November, 2010, at 10:10 A.M., in the City Council Chambers, 2600 Fresno Street, Fresno, California. At said time and place, all written and oral protests made or filed where duly heard, evidence for and against the proposed action was received, and a full, fair, and complete hearing was granted and held. All protests were duly overruled, and it was determined by this Council that there was no majority protest under Streets and Highways Code Section 36023.

(c) The public interest, convenience, and necessity require the disestablishment of all areas and zones of BIA No. One and the discontinuance of the levy of special business tax therein.

(d) Ordinance No. 71-124 is hereby rescinded concurrently with the effective date of this ordinance.

SECTION 2. EFFECTIVE DATE. This ordinance shall become effective and in full force and effect as of December 31, 2010.

STATE OF CALIFORNIA)

COUNTY OF FRESNO) ss.

CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the [18th] day of [November], 2010.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Mayor Approval: _____

Mayor Approval/No Return: _____

Mayor Veto: _____

Council Override Vote: _____

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM

JAMES C. SANCHEZ
CITY ATTORNEY'S OFFICE

By: Robert R. Coyle 10-12-10
Senior Deputy Date

RRC:elb [54184elb/rcc] Ordinance