

CITY COUNCIL ORDINANCE NO. 02-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE ADDING CHAPTER 7.5 TO DIVISION 7 OF THE IRVINE MUNICIPAL CODE, AUTHORIZING THE ESTABLISHMENT OF BUSINESS IMPROVEMENT DISTRICTS AND THE LEVY OF BUSINESS IMPROVEMENT ASSESSMENTS

WHEREAS, the City Council of the City of Irvine finds and declares that it is in the public interest to promote, maintain and enhance the economic strength and physical maintenance of the business districts within the City in order to create and conserve jobs, attract new businesses, and prevent erosion of the City's business districts; and

WHEREAS, the City Council finds there is a particular local benefit to allow the City to fund business-related improvements and activities through the levy of assessments upon the businesses which benefit from these improvements and activities; and

WHEREAS, the City Council finds and declares that tourism is a large and growing contributor to the City's economy and that the promotion of the City's business, cultural, scenic, recreational and other attractions as a tourist destination is an important public purpose; and

WHEREAS, the City Council finds and declares that assessments levied for the purpose of providing improvements and promoting activities which benefit individual businesses within the City may also benefit the property within the area directly or indirectly, and that those assessments are not taxes for the general benefit of the City, but are assessments for the improvements and activities which confer special benefits upon the businesses for which the improvements and activities are provided; and

WHEREAS, representatives of a majority of the hotels within the City have requested that the City consider the creation of a business improvement district to assess and provide benefits to the hotels in the City, and to encourage business attraction and retention, and cultural and other tourist-related activities within the City.

NOW, THEREFORE, the City Council of the City of Irvine does hereby ordain as follows:

SECTION 1: Chapter 7.5 of Division 7 of the Irvine Municipal Code is hereby added to read as follows:

CHAPTER 7.5. BUSINESS IMPROVEMENT DISTRICTS

Sec. 2-7-750. Findings and Purpose

(a) The assessments levied under this Section are for the purpose of providing improvements and promoting activities that benefit individual businesses, and may also benefit directly or indirectly the property within the area designated for assessments. The assessments levied under this Section are not taxes for the general benefit of the City, but are assessments for the improvements and activities which confer special benefits upon the businesses for which the improvements and activities are provided.

(b) The purpose of this Section is to authorize the City to levy assessments on business within specified areas of the City and to provide a uniform procedure to levy assessments for improvements and activities of businesses located and operating within such areas. This Section is also intended to provide a method for financing public programs to attract tourist visits to areas of the City where tourism is economically important and desired.

Sec. 2-7-751. Definitions

(a) "Advisory board" means the advisory board appointed by the City Council pursuant to Section 2-7-760.

(b) "Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities that will benefit the businesses located and operating within a specified area.

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

(d) "Improvement" means the acquisition, construction, installation or maintenance of any tangible property with an estimated useful life of 5 years or more including, but limited to, the following:

1. Parking facilities.
2. Benches.
3. Trash receptacles.
4. Street lighting.

5. Decorations.
 6. Parks.
 7. Fountains.
 8. Parking structures.
- (e) "Activities" means, but is not limited to, all of the following:
1. Promotion of public events which benefit businesses in the area and which take place on or in public places.
 2. Furnishing of music or other cultural programs in any public place in the City.
 3. Promotion of tourism within the City.
 4. Activities which benefit businesses located and operating within a specified area of the City, including marketing, economic development, business retention and business recruitment.

Sec. 2-7-752. Resolution of Intention to Establish a Business Improvement Area

Proceedings to establish a business improvement area shall be instituted by the adoption by the City Council of a resolution of intention to establish the business improvement area. The resolution of intention shall do all the following:

- (a) State that a business improvement area is proposed to be established pursuant to this Section and describe the boundaries of the territory proposed to be included in the business improvement area and the boundaries of each separate benefit zone, if any, to be established within the area. The boundaries of the area may be described by reference to a map on file in the Office of the City Clerk, showing the proposed business improvement area.
- (b) State the name of the proposed business improvement area.
- (c) State the type or types of improvements and activities proposed to be funded or acquired by the levy of assessments on businesses in the area.
- (d) State the type or types of businesses subject to the assessment.
- (e) State that, except where funds are otherwise available, an assessment will be levied annually to pay for all improvements and activities within the business improvement area.

(f) State the proposed method and basis for levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business.

(g) State the term, if any, for the levy of the assessment.

(h) Fix a time and place for a public hearing on the establishment of the business improvement area and the levy of assessments, which shall be held not less than 20 nor more than 40 days after the adoption of the resolution of intention.

(i) State whether or not the City's costs and expenses in auditing and administering the assessment and improvements and activities will be funded from the assessment.

(j) State that at the hearing the testimony of all interested persons for or against the establishment of the business improvement area, the extent of the area, the type or types of businesses subject to the assessment, the basis and term of the assessment, or the furnishing of specified types of improvements or activities, will be heard. The notice shall also describe, in summary, the effect of protests made by business owners against the establishment of the business improvement area, the extent of the area, the type or types of businesses subject to the assessment, the basis and term of the assessment, and the furnishing of a specified type of improvement or activity, as provided in Section 2-7-754.

Sec. 2-7-753. Notice of Public Hearing

Notice of a public hearing to establish a business improvement area shall be given by both of the following:

(a) Mailing of a complete copy of the resolution of intention by first class mail to each affected business owner in the proposed business improvement area within 7 days of the City Council's adoption of the resolution of intention.

(b) Posting of the resolution of intention at the City Hall.

Sec. 2-7-754. Hearing and Protests on Establishment of Business Improvement Area and Levy of Assessments

(a) At the public hearing, the City Council shall hear and consider all protests against the establishment of the business improvement area, the extent of the business improvement area, the type or types of businesses on which the assessment may be imposed, or the furnishing of specified types of improvements or activities within the business improvement area. A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the regularity or defect to which the objection is made.

(b) Every written protest shall be filed with the City Clerk at or before the time fixed for the public hearing. The City Council may waive any regularity in the form or content of any written protest, and; at the public hearing, the City Council may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

(c) Each written protest shall contain a description of the business in which the person subscribing the protest is interested that is 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.

Sec. 2-7-755. Majority Protest and Termination of Proceedings to Establish a Business Improvement Area

If written protests are received and not withdrawn from the owners of affected businesses in the proposed business improvement area that will pay 50% or more of the assessments proposed to be levied, the City Council shall terminate the proceedings for the establishment of the proposed business improvement area and the levy and imposition of the proposed assessment.

Sec. 2-7-756. Adoption, Revision, Change, Reduction or Modification of Assessments, Improvements and Activities

(a) At the conclusion of the public hearing to establish the area, the City Council may adopt, revise, change, reduce or modify the proposed assessment of the type or types of improvements and activities to be funded with the revenues from the assessments.

(b) At the public hearing, the City Council may only make changes in, to or from the boundaries of the proposed business improvement area that will exclude territory which the City Council finds will not benefit from the proposed improvements or activities. Proposed assessments may only be revised by reducing any or all of them, or by reducing the term during which the assessment will be imposed.

(c) The City Council shall not change the boundaries of the proposed business improvement area to include any territory that will not, in its judgment, benefit by the improvement or activity. Any addition of territory to the proposed boundaries of the area may be made only by notice to the owners of the businesses proposed to be added to the area, and upon a public hearing on the addition of the territory, as set forth in this Chapter.

(d) The City Council shall not change the type of activities or improvements to be funded, or the amount of the assessment to be expended on any activity or improvement, unless (1) a majority of the owners of the businesses in the area subject to the assessment consent to such change, or (2) the City adopts an new

resolution of intention pursuant to section 2-7-752, and notices a new public hearing pursuant to section 2-7-753.

Sec. 2-7-757. Resolution Establishing Business Improvement Area and Levying Assessment

Upon the close of a public hearing, and if written protest are not received from the owners of businesses in the proposed area that will pay 50% or more of the assessments proposed to be levied, the City Council may establish the business improvement area and levy the assessment. The resolution establishing the business improvement area and levying assessment shall contain all of the following:

- (a) The name, date of adoption and title of the resolution of intention.
- (b) The time and place where the public hearing was held concerning the establishment of the business improvement area and the levy of the assessment.
- (c) The determination regarding any protest received at the public hearing.
- (d) The description of the boundaries of the business improvement area and of each separate benefit zone, if any, established within the business improvement area.
- (e) A statement that a business improvement area has been established, and the name of the area.
- (f) A description of the type or types of businesses subject to the levy to be assessed by the resolution.
- (g) A statement that the affected business in the business improvement area established by the resolution shall be subject to any amendments.
- (h) A description of the method and basis of levying the assessment, with the breakdown by classification of business if a classification is used.
- (i) A statement that the City Council has determined to levy and collect assessment within the business improvement area, the basis for the assessment, and the term, if any, of such assessment.
- (j) A description of the improvements and activities authorized to be funded within the business improvement area.
- (k) A statement that the improvement and activities to be provided in the business improvement area to be funded by the levy of the assessments.
- (l) If the City's costs and expenses in auditing and administering the assessment and improvements and activities will be funded from the assessment, a statement so declaring.

(m) A finding that the businesses and the property within the business improvement area will be benefited by the improvements and activities funded by the assessments levied.

(n) A statement of the time and manner of collecting the assessments.

Sec. 2-7-758. Establishment of Benefit Zones for Assessments

The City Council may establish one or more separate benefit zones within the business improvement area, based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone, and the City Council may impose a different assessment within each benefit zone.

Sec. 2-7-759. Procedures Relating to Benefit Zones

All provisions of this Chapter applicable to the establishment, modification or disestablishment of a business improvement area shall apply to the establishment, modification or disestablishment of benefit zones. The City Council shall, to establish, modify or disestablish a benefit zone, follow the procedure to establish, modify or disestablish a business improvement area.

Sec. 2-7-760. Business Improvement Area Advisory Board

The City Council may appoint an advisory board which shall review the City's annual budget for the business improvement area, review the audit of revenues and expenses of the business improvement area, assist in the preparation of an annual report to the City Council regarding the activities within the business improvement area, and recommend to the City Council the use of the assessment revenues. The City Council may limit membership of the advisory board to persons or businesses paying the assessments for the business improvement area. The City Council may appoint the advisory board prior to the adoption of the resolution of intention to create the business improvement area, so that the advisory board may recommend the provisions of the resolution of intention.

Sec. 2-7-761. Annual Budget

Prior to each fiscal year during which an assessment is levied within a business improvement area, the City Council shall adopt a budget reflecting the anticipated revenues and proposed expenditures of assessment revenue, and such other funds as the City Council may determine appropriate, within the business improvement area during the succeeding fiscal year. Prior to the adoption of the budget by the City Council, the draft budget may be referred to the advisory board of the business improvement area for its review and recommendations, if such an advisory board is established.

Sec. 2-7-762. Audit of Business Improvement Area Activities

The City shall annually cause to be conducted an audit of the financial affairs and activities within a business improvement area. The audit shall be filed with the City Council, and a copy shall be provided to the advisory board for its review and comment, if such an advisory board is established.

Sec. 2-7-763. Annual Report

(a) The City shall cause to be prepared a report for each fiscal year for which assessments are levied and collected to pay the costs of improvements and activities described in the report. If the City establishes an advisory board of the business improvement area, the City may delegate to the advisory board the preparation of the annual report, or alternatively provide a draft of the annual report to the advisory board for its review and comments. The report may propose changes, including but not limited to the boundaries of the business improvement area or any benefit zones within the area, the basis and method of levying assessments, and any changes in the classifications of businesses, if a classification is used.

(b) The report shall be filed with the City Council and shall refer to the business improvement area by name, specify the fiscal year to which the report applies, and contain such other information as the advisory board deems appropriate.

Sec. 2-7-764. Basis of Assessment and Classification of Businesses in Business Improvement Area.

The assessments levied on businesses pursuant to this Chapter shall be levied on the basis of the estimated benefit to the businesses and property within the business improvement area. The City Council may classify businesses for purpose of determining the benefit to a business of the improvements and activities provided pursuant to this part. Assessment revenues may only be expended on improvements and activities authorized by this Code and designated by the City Council in the resolution adopted pursuant to Section 2-7-767.

Sec. 2-7-765. Time Limits for Challenging the Establishment of a Business Improvement Area or the Levy of Assessments

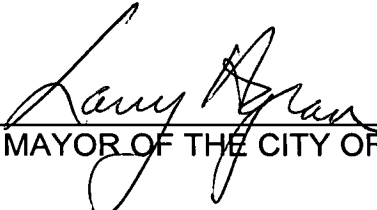
The establishment of a business improvement area, the extent of the area, the type or types of businesses subject to the levy of the assessments, the types of improvements or activities in the business improvement area to be funded by the assessments, and/or the validity, method of calculating or terms of an assessment levied under the Chapter shall not be contested in any action or proceeding unless the action or proceeding is commenced and the City served within 30 calendar days for the adoption of the resolution establishing the business improvement area and levying the assessment pursuant to Section 2-7-757.

Sec. 2-7-766. Disestablishment of Business Improvement Area and Termination of Assessments.

(a) In December of each year following the first full fiscal year in which an assessment is levied, the businesses in a business improvement area subject to the assessment may by written notice to the City Council, petition for the disestablishment of the business area and the termination of the assessment. The written petition shall not be effective unless petitions are received from the owners of business in the business improvement area paying 50% or more of the assessments levied within the area.

(b) If petitions are received during the month of December in any fiscal year following the first fiscal year in which the assessment is levied, from the owners of businesses in the business improvement area paying 50% or more of the assessments levied as of the date of the petition, the City Council shall, within 30 days of receipt of such petition, take action to disestablish the business improvement area and terminate the assessments, effective on June 30 of that fiscal year.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 11th day of June, 2002.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, JERI L. STATELY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on March 12, 2002, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 11th day of June, 2002, by the following vote:

AYES: 3 COUNCILMEMBERS: Krom, Mears and Agran

NOES: 2 COUNCILMEMBERS: Smith and Ward

ABSENT: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) s
s
CITY OF IRVINE)

I, JERI L. STATELY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that on the 20th day of June, 2002, I caused to have posted the foregoing true and correct copy of Ordinance No. 02-08 of the City of Irvine in the following public places in the City:

- 1) Bulletin Board in Walnut Village Shopping Center, Culver and Walnut, Irvine.
- 2) Bulletin Board in University Park Shopping Center, Culver at Michelson, Irvine.
- 3) Bulletin Board in Northwood Shopping Center, Irvine Boulevard at Yale, Irvine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City Council of the City of Irvine, California, the 20th day of June, 2002.


CITY CLERK OF THE CITY OF IRVINE