

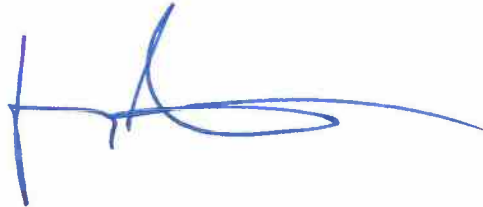
COMMISSION MEMORANDUM

To: Mayor Dan Gelber
Members of the City Commission

cc: Raul J. Aguila, City Attorney
Rafael Granado, City Clerk

From: Jimmy Morales, City Manager

Date: January 15, 2020



Subject: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CREATING, PURSUANT TO CHAPTER 170, FLORIDA STATUTES, AND SUBJECT TO THE APPROVAL OF A MAJORITY OF THE AFFECTED PROPERTY OWNERS, A SPECIAL ASSESSMENT DISTRICT TO BE KNOWN AS "THE SOUTH BEACH BUSINESS IMPROVEMENT DISTRICT," FOR A TERM OF TEN (10) YEARS, TO STABILIZE AND IMPROVE THAT CERTAIN AREA OF THE CITY OF MIAMI BEACH HEREIN REFERRED TO AS THE OCEAN DRIVE AND COLLINS AVENUE RETAIL BUSINESS DISTRICT, WHICH DISTRICT IS GENERALLY LOCATED WITHIN A NATIONALLY RECOGNIZED HISTORIC DISTRICT, THROUGH PROMOTION, MANAGEMENT, MARKETING, AND OTHER SIMILAR SERVICES (THE "SERVICES"); PROVIDING FOR THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS, IN THE AMOUNT OF \$2,093,335 PER YEAR; INDICATING THE LOCATION, NATURE, AND ESTIMATED COST OF THE SERVICES, WHOSE COSTS ARE TO BE DEFRAID BY THE SPECIAL ASSESSMENTS; PROVIDING THE MANNER IN WHICH SUCH SPECIAL ASSESSMENTS SHALL BE MADE; PROVIDING WHEN SUCH SPECIAL ASSESSMENTS SHALL BE MADE; DESIGNATING THE LANDS UPON WHICH THE SPECIAL ASSESSMENTS SHALL BE LEVIED; PROVIDING FOR PUBLICATION OF THIS RESOLUTION, IN ACCORDANCE WITH SECTION 170.05, FLORIDA STATUTES; AUTHORIZING THE CITY ADMINISTRATION TO CAUSE TO BE MADE A PRELIMINARY ASSESSMENT ROLL, IN ACCORDANCE WITH SECTION 170.02, FLORIDA STATUTES; AND UPON COMPLETION OF SUCH PRELIMINARY ASSESSMENT ROLL, PROVIDING THAT SUCH ASSESSMENT ROLL SHALL BE ON FILE WITH THE CITY CLERK'S OFFICE AND OPEN TO THE INSPECTION OF THE PUBLIC.

Recommendation

Adopt the attached Resolution which is sponsored by Commissioner Ricky Arriola.

A. Background

Chapter 170, Florida Statutes, authorizes any municipality, subject to the approval of a majority of the affected property owners, to levy and collect special assessments against property benefitted for the purpose of stabilizing and improving retail business districts, wholesale business districts, or nationally recognized historic districts, or any combination of such districts, through

promotion, management, marketing, and other similar services.

On December 17, 2014, the Mayor and City Commission adopted Resolution No. 2014-28881, which originally contemplated establishment of a special assessment district, pursuant to Chapter 170, Florida Statutes, initially limited to a boundary encompassing solely the Ocean Drive retail business district. Following adoption of Resolution No. 2014-28881, a steering committee of property owners requested that the City Commission expand the proposed special assessment district, to include the Collins Avenue corridor, bounded on the south by 5th Street, and extending northward up to and including 21st Street.

On September 12, 2018, the Mayor and City Commission adopted Resolution No. 2018-30487 which, in pertinent part, authorized the Offices of the City Manager and City Attorney to work with the steering committee of Ocean Drive and Collins Avenue property owners for the purpose of establishing a special assessment district, pursuant to Chapter 170, Florida Statutes, to stabilize and improve the Ocean Drive and Collins Avenue retail business district, which district is generally located within a nationally recognized historic district, through promotion, management, marketing, and other similar services.

The attached Resolution is the first step under Chapter 170, Florida Statutes, for creating the proposed special assessment district, and is hereby submitted for consideration by the Mayor and City Commission.

B. The Proposed “South Beach Business Improvement District”

The attached Resolution creates, subject to the approval of a majority of the affected property owners, a special assessment district, to be known as the “South Beach Business Improvement District” (the “District”), for a term of ten (10) years, to stabilize and improve the Ocean Drive and Collins Avenue retail business district, that certain district within a nationally recognized historic district and which is generally bounded on the north by 1601 Collins Avenue/1610 Collins Avenue and on the south by 5th Street, through promotion, management, marketing, and other similar services.

The Resolution provides for the creation of a preliminary assessment roll; provides for the levy and collection of special assessments, in the amount of \$2,093,335 per year; indicates the location, nature, and estimated cost of those services whose cost are to be defrayed by the special assessments; provides the manner in which such special assessments shall be made; provides when such special assessments shall be made; designates the lands upon which the special assessments shall be levied; provides for publication of this Resolution; and authorizes other related actions.

The material terms for the proposed District are as follows:

1. District Boundaries

The District shall be generally bounded on the north by the northern boundary lines of the properties located at 1601 Collins Avenue and 1610 Collins Avenue, and on the south by 5th Street, and consists of properties abutting Collins Avenue and Ocean Drive; provided, however, that the following properties shall be excluded and exempted from the District: (1) residential properties; (2) common areas owned by condominium associations; (3) any property owned by a City, County, State, or Federal governmental entity or school district; (4) any property owned or occupied by a religious institution and used as a place of worship or education (as defined in Section 170.201(2), Florida Statutes); and (5) properties that are 60 square feet or less in size.

Pursuant to Section 170.04, Florida Statutes, at the time of the adoption of the attached Resolution, there shall be on file with the City Clerk an assessment plat showing the area to be assessed, which assessment plat shall be open to the inspection of the public. A proposed assessment plat is attached as Exhibit "D" to the Resolution.

2. Term/Duration of the District

The term/duration of the proposed District is ten (10) years.

3. Total Annual Amount of Special Assessments to be Levied and Collected

The total annual amount of special assessments to be levied and collected shall be \$2,093,335 per year.

4. Assessment Methodologies

- a. Properties within the District that front Ocean Drive shall be assessed at the rate of two dollars (\$2.00) per square foot and properties within the District that front Collins Avenue shall be assessed at the rate of one dollar (\$1.00) per square foot.¹
- b. Condominium properties shall be assessed, at the prevailing rate above, *per square foot of each ground floor condominium unit*, excluding common areas. Non-condominium properties shall be assessed, at the prevailing rate above, *per square foot of the property's lot area*.
- c. The following exceptions to the above sections 4.a and b shall apply:
 - i. As to the properties located at 530 Ocean Drive and 1330 Ocean Drive, the assessment shall be based on the unit size of the ground level in addition to the unit size of any commercial uses in a basement below grade.
 - ii. As to the property located at 1412 Ocean Drive, the assessment shall be based on the unit size of the ground level commercial use.
 - iii. As to the property located at 1300 Collins Avenue, the assessment shall be based upon the unit size of the ground level commercial uses.
- d. Properties that are 50,000 square feet in lot size or greater shall be assessed pursuant to the following formula:
 - The first 49,999 square feet of the property shall be assessed at 100% of the rate set forth above;
 - Each square foot between 50,000 and 100,000 shall be assessed at 90% of the rate;
 - Each square foot between 100,001 and 150,000 square feet shall be assessed at 80% of the rate;
 - Each square foot between 150,001 and 200,000 square feet shall be assessed at 70% of the rate; and
 - Each square foot greater than 200,000 square feet shall be assessed at 60% of

¹ South Beach BID Partners, Inc. (the "BID"), a Florida nonprofit corporation, represents a group of property owners in the vicinity of, abutting, or located on Ocean Drive and Collins Avenue. As proponents of the creation of the District, the BID has provided the City Attorney with an opinion of counsel relating to the legal sufficiency of the proposed assessment formula (See Letter of Michael Llorente, Esq., dated November 1, 2019, attached to this Memorandum as Exhibit "1"). The opinion of counsel concludes that the assessment methodology proposed by the BID complies with applicable legal requirements.

the rate.

- e. Properties within the proposed District that are also located within the boundaries of the Washington Avenue Business Improvement District shall be assessed at the rate of sixty cents (\$0.60) per square foot.

5. Services to be Provided

The special assessments shall be used to fund those Services described in Exhibit "B" to the Resolution. In addition to general and administrative costs, the BID's first year budget projection includes expenses for the following Services: marketing (advertising and promotional branding); programming (cultural activations and events); beautification (décor, lighting, and art); sanitation (maintenance and cleaning to supplement City services); and security (including off-duty police, private security, and ambassadors).

Given the different assessment methodology proposed for the two business corridors, the Administration has requested more detailed explanation from the BID as to distribution of the Services throughout the District. We anticipate that this information will be provided prior to the City Commission's consideration of the final Resolution establishing the District.

The BID intends to expend programming funds on events and activations in Lummus Park. Any activities in Lummus Park are subject to City approval; the BID cannot conduct programming on City property without either (i) obtaining a special event permit, or (ii) partnering with the City or a City permittee.

The Administration has requested additional information on all proposed Services, including activities in Lummus Park, and anticipates that this information shall be provided prior to City Commission consideration of the aforestated final Resolution.

C. Procedure for Creating the District, Following the Adoption of the Attached Resolution

1. Notice Requirement

Upon adoption of the attached Resolution, and pursuant to Section 170.05, Florida Statutes, the City shall cause the Resolution to be published one time in a newspaper of general circulation published in the City.

2. Preliminary Assessment Roll

Additionally, upon adoption of the attached Resolution, and pursuant to Section 170.02, Florida Statutes, the Administration shall cause to be made a preliminary assessment roll, in accordance with the method of assessment provided for in the Resolution, which assessment roll shall show the lots and lands assessed, the amount of benefit to and the assessment against each lot or parcel of land, and the number of annual installments in which the assessment is divided. Upon completion of the preliminary assessment roll, it shall be made available for public inspection in the City Clerk's office. (A draft of the preliminary assessment roll is attached hereto as Exhibit "F").

3. Special Mail Ballot Election

Following adoption of the attached Resolution by the Mayor and City Commission, and completion of the preliminary assessment roll, the City Clerk, in consultation with the City Attorney's Office,

shall conduct a special mail ballot election for the majority (50% plus one) of the affected property owners to approve the proposed special assessment.

4. Final Hearing for the Mayor and City Commission to Hear Testimony, Decide Whether to Levy Special Assessments, and Meet as an Equalizing Board to Adjust and Equalize the Assessments on a Basis of Justice and Right

Upon completion of the preliminary assessment roll, and upon the approval of the District by a majority of the affected property owners, the Mayor and City Commission must adopt a subsequent Resolution to schedule a public hearing at which the owners of the properties to be assessed or any other persons interested therein may appear before the Mayor and City Commission and be heard as to the propriety and advisability of the assessments proposed to be levied, or the provision of the Services, the costs thereof, the manner of payment therefor, or the amount thereof to be assessed against each lot so serviced.

Following the public hearing, the Mayor and City Commission shall make a final decision on whether to levy the special assessments. At that time, the Mayor and City Commission shall also serve as an "equalizing board" to hear and consider any and all complaints as to the special assessments, and shall adjust and equalize the assessments on a basis of justice and right. When so equalized, and approved by Resolution of the Mayor and City Commission, a final assessment roll shall be filed with the City Clerk, and the special assessments (as set forth in the final roll) shall stand confirmed and remain legal, valid, and binding liens upon the property against which such assessments are made, until paid.

D. Conclusion

The attached Resolution shall become effective upon the date of adoption; provided, however, that if the proposed special assessment does not subsequently receive the approval of a majority (50% plus one) of the affected property owners, the attached Resolution shall be null and void.

City Manager's Recommendation

The Administration recommends that the City Commission proceed to initiate creation of the proposed District by adoption of the Resolution as set forth above. Final consideration and creation of the District is subject to the approval of a majority of the affected properties in a mail ballot election, and following that, final approval following a duly noticed public hearing of the City Commission.

Exhibit 1 to Memorandum - Letter of Michael Llorente, Esq., dated November 1, 2019

Attachments to Resolution:

- Exhibit A – City Commission Resolution Nos. 2014-28881, dated December 17, 2014, and 2018-30487, dated September 12, 2018
- Exhibit B – Budget Narrative and Scope of Services
- Exhibit C – Proposed Budget Year 1
- Exhibit D – Assessment Plat
- Exhibit E – Assessment Methodologies
- Exhibit F – Preliminary Assessment Roll

To: Ceci Velasco
From: Michael Llorente, Esq.
Date: November 1, 2019
Re: Business Improvement District Assessment Methodology

You have asked our firm to review the legal sufficiency of the proposed cost apportionment methodology for the South Beach Business Improvement District (“South Beach BID” or “BID”). As set forth below, we find that the proposed cost apportionment methodology complies with the applicable legal requirements.

I. Factual Background

For over two years, property owners and operators within the City’s Mixed Use Entertainment District (“MXE District”) have been exploring the possible creation of a business improvement district to develop a cohesive identity, provide additional security and sanitation services, and market and stabilize the area. While the MXE District is largely unified in terms of zoning, history, and architecture, the district consists of two areas that are sometimes viewed separately: (i) the Collins Avenue corridor; and (ii) the Ocean Drive corridor. Led by stakeholders from *both* the Collins Avenue corridor and the Ocean Drive corridor, the proponents of the South Beach BID have proposed boundaries that closely track the boundaries of the existing MXE District. A comparative analysis of the boundaries of the MXE District and the proposed South Beach BID is attached as Exhibit A.

One of the primary objectives of the proposed South Beach BID is to create an integrated district that combines the entertainment and nightlife offerings on Ocean Drive with the retail and hotel offerings along Collins Avenue. It is anticipated that the creation of an integrated district – with improved security, aesthetics, marketing, and programming – will have a meaningful positive impact on commercial activity, property values, and the overall tax base within the BID boundaries.

The proposed South Beach BID will include approximately two hundred and twenty-one (221) folios – eighty-seven (87) folios on Ocean Drive and one hundred thirty-three (133) folios on Collins Avenue. Properties on Ocean Drive will be assessed at a rate of \$2.00 per lot square foot and properties on Collins Avenue will be assessed at a rate of \$1.00 per lot square foot. The reason for the cost differential is that Ocean Drive is a single-loaded street (with properties on one side of the street only), while Collins Avenue is a double-loaded street (with properties on both sides of the street). As a result, the cost of providing security, sanitation, and other services on Ocean Drive must be borne by property owners on one side of the street, while those same costs on Collins Avenue may be split among property owners on both sides of the street.

The proposed budget of the BID is approximately \$2,091,692 and consists of the following general categories:

- \$396,000 for marketing (branding, marketing, promotion);
- \$331,000 for programming (events and activations);
- \$145,000 for beautification (lighting, décor, seasonal displays);
- \$304,000 for sanitation (“clean team” for trash removal, spills, stickers, graffiti);
- \$571,640 for security (off-duty police, privately-licensed security, BID ambassadors);
- \$205,000 for administration (staffing costs, employee benefits); and
- \$139,052 for general expenses (rent, insurance, equipment).

II. Legal Standard

The proposed South Beach BID will be created pursuant to Chapter 170 of the Florida Statutes, which sets forth the legal requirements for the imposition of special assessments on private property owners. Under Chapter 170, the City has the authority to levy and collect special assessments for the improvement and stabilization of retail business districts through promotion, management, marketing, and other similar services, subject to the approval of a majority of the affected property owners. See Section 170.01(3).

Courts have set forth a two-prong test for the imposition of a valid special assessment. First, the assessed properties must derive a *special benefit* from the service provided. Second, the assessment must be *fairly and reasonably apportioned* among the specially benefitting properties. See *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992). The findings of special benefit and proper apportionment “are legislative in nature and presumed correct.” *Donovan v. Okaloosa County*, 82 So.3d 801, 811 (Fla. 2012). “The presumption of correctness can be overcome only by strong, direct, clear, and positive proof.” *Id.* at 812.

The test to determine whether a *special benefit* exists is “whether there is a ‘logical relationship’ between the services provided and the benefit to the real property.” *Lake County v. Water Oak Mgmt. Corp.*, 695 So.2d 667, 669 (Fla.1997). Courts have declined to articulate a formal standard for the *reasonable apportionment* requirement, declaring instead that local determinations should be upheld unless they are arbitrary. See, e.g., *City of Winter Springs v. State*, 776 So. 2d 255, 259 (Fla. 2001) (“[T]hough a court may recognize valid alternative methods of apportionment, so long as the legislative determination by the City is not arbitrary, a court should not substitute its judgment for that of the local legislative body.”). Notably, a public agency has no obligation to identify a specific dollar amount of benefit received by each parcel assessed. *City of Boca Raton*, 595 So.2d at 31; see also *Cape Dev. Co. v. City of Cocoa Beach*, 192 So. 2d 766 (Fla. 1966) (finding that statutory requirements were met where a city determined that anticipated benefits exceeded the amount of the special assessments and, consequently, city was not required to itemize the specific benefit to each parcel). Indeed, “[s]ubstantial and not exact correspondence between assessments and benefits is required, and a wide latitude is allowed for legislative discretion.” *Atl. Coast Line R. Co. v. City of Lakeland*, 94 Fla. 347, 368, 115 So. 669, 678 (1927).

III. Analysis

The proposed BID will provide wide-ranging services – including marketing, programming, security, and sanitation services – *exclusively* to properties within the BID boundaries. Studies have found that properties within business improvement districts enjoy significant short- and long-term financial benefits as a result of these types of services. For example, a group of researchers at New York University’s Furman Center for Real Estate and Urban Policy surveyed forty-four (44) BIDs in the New York area and determined that commercial property values within BID boundaries increased approximately fifteen (15) percentage points more rapidly than comparable properties outside the BID boundaries.¹ In the instant case, the BID will offer valuable services exclusively within the BID boundaries. These services will create a safer, cleaner, more attractive environment that will generate more commercial activity and – according to empirical studies like the one cited above – will increase commercial property values within the BID boundaries. Clearly, then, there is a “logical relationship” between the anticipated services and the anticipated benefits to properties within the BID boundaries.

In determining whether the proposed special assessment is “fairly and reasonably apportioned” among the specially benefitting properties, we must examine the formula and methodology that determines the tax obligation accruing to each specially benefitting property. In this case, the proposed formula is based on the *square footage* of each specially benefitting property. In other words, the ultimate tax bill for a particular property will depend largely on the size of the property. This method of cost apportionment has been expressly endorsed by the courts and described as a “traditional” methodology. *See, e.g., City of Boca Raton*, 595 So.2d at 31 (“While front foot or square foot methodologies for apportioning costs of special improvement projects are more *traditional*, other methods are permissible”) (emphasis added). In order to ensure equitable distribution of costs and avoid placing an undue burden on the extraordinarily large properties, the proposed apportionment methodology provides a scaled assessment reduction for properties greater than fifty thousand square feet (50,000 sf). Residential properties have been excluded from the proposed assessment rolls.²

Finally, the proposed assessment methodology calls for a cost-differential formula where Ocean Drive properties are assessed at a rate of \$2.00 per lot square foot and Collins Avenue properties are assessed at a rate of \$1.00 per lot square foot. As a preliminary matter, we should note that location-based, cost-differential formulas are not unusual for business improvement districts and, in fact, have been utilized by several local business improvement districts. In the present case, the reason for the cost differential formula is simple. As noted above, while the Ocean Drive corridor and the Collins Avenue corridor are roughly equal in terms of linear footage, sidewalk coverage, etc., Ocean Drive is a single-loaded street. As a result, the cost of providing security, sanitation, and other services on Ocean Drive must be borne by properties on *one* side of the street, while the cost of providing similar services on Collins Avenue may be spread among properties on *both* sides of the street. Based on the above, we believe the proposed assessment methodology, including the cost differential, is fair and reasonable and complies with the legal requirements set forth in Florida case law.

¹ The complete report produced by New York University’s Furman Center for Real Estate and Urban Policy is available at the following link: <https://furmancenter.org/files/publications/FurmanCenterBIDsBrief.pdf>.

² The decision to exclude residential properties is based, in part, on the findings of the New York University study, which found that while BIDs offer substantial benefits to commercial properties, “the formation of a BID has little impact on the value of residential properties.”

To be clear, while the proponents of the BID have considered property location for purposes of designing a fair and reasonable assessment methodology, the BID proponents view *both* the Ocean Drive corridor and the Collins corridor as part of a *unified* district. As such, they have proposed a unified budget that serves the entire district. This unified budget will afford the BID reasonable flexibility to deploy services in a strategic manner that maximizes the benefit to the entire district. For example, it is anticipated that during the early years of the BID, significant security and sanitation resources will be focused on Ocean Court as well the various side streets that connect Ocean Drive and Collins Avenue. The improvement of these “connectors” will not only improve safety and aesthetics within the district, but it will increase pedestrian connectivity between the dining, hospitality, and entertainment attractions on Ocean Drive and the dining, hospitality, and shopping destinations on Collins Avenue. It is anticipated that commercial properties throughout the *entire* district will receive significant benefits from this increased connectivity, as well as the complementary marketing and branding efforts that will strive to create a truly unified district.³

³ This connectivity, as well as BID’s (re)branding efforts, will no doubt increase commercial activity within the Collins Avenue shopping district, which includes designer brands and retailers like Urban Outfitters, Zara, Benetton, Armani Exchange, Steve Madden, Nine West, Victoria’s Secret, GAP, Banana Republic, Tommy Hilfiger, Barneys COOP, Guess, Levi’s True Religion, Sephora, MAC Cosmetics.