

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Philip Levine
Members of the City Commission
Jimmy Morales, City Manager

cc: Rafael Granado, City Clerk

From: Raul J. Aguila, City Attorney



Date: October 18, 2017

Subject: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CREATING, SUBJECT TO THE APPROVAL OF A MAJORITY OF THE AFFECTED PROPERTY OWNERS, A SPECIAL ASSESSMENT DISTRICT TO BE KNOWN AS THE WASHINGTON AVENUE BUSINESS IMPROVEMENT DISTRICT, FOR A TERM OF TEN (10) YEARS, TO STABILIZE AND IMPROVE THE WASHINGTON AVENUE RETAIL BUSINESS DISTRICT, WHICH IS 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 \$511,331 PER YEAR; INDICATING THE LOCATION, NATURE, AND ESTIMATED COST OF THOSE SERVICES WHOSE COSTS ARE TO BE DEFRAYED 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; AND AUTHORIZING RELATED ACTIONS.

A. Background

The Washington Avenue BID Inc. (the "BID") is a Florida non profit corporation, which represents a group of property owners of real estate in the vicinity of, abutting, or located on Washington Avenue.

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 benefited 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 January 11, 2017, the Mayor and City Commission adopted Resolution No. 2017-29719, which, in pertinent part, authorized the Offices of the City Manager and City Attorney to work with the Steering Committee of the Washington Avenue property owners, for the purpose of establishing a special assessment district, pursuant to Chapter 170, Florida Statutes, to stabilize and improve the Washington Avenue retail business district, which is 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 submitted for consideration by the Mayor and City Commission.

B. The Proposed "Washington Avenue 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 "Washington Avenue Business Improvement District" (the "District"), for a term of ten (10) years, to stabilize and improve the Washington Avenue retail business district, which is located within a nationally recognized historic business district, through promotion, management, marketing, and other similar services. The Resolution provides for the levy and collection of special assessments, in the amount of \$511,331 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 related actions.

The proposed material terms for the District are as follows:

1. District Boundaries

The District shall be bounded on the north by 17th Street and on the south by 5th Street, and consists of properties abutting Washington Avenue and/or the cross-streets intersecting Washington Avenue; 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; and (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).

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 \$511,331 per year.

4. Assessment Methodologies

Properties within the District that front Washington Avenue and those streets that intersect Washington Avenue will be assessed at the rate of forty cents (\$0.40) per square foot of the lot size, based on the size of the ground floor only. Properties within the District that front the pedestrian-only section of Española Way located west of Washington Avenue will be assessed at the rate of eighteen cents (\$0.18) per square foot of the lot size, based on the size of the ground floor only. With respect to 408 Lincoln Road, the special assessment shall be calculated based on the square footage of only that portion of property that lies south of Lincoln Lane South.

5. Services to be Provided

The special assessments shall be used to fund those Services described in Exhibit "B" to the attached 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 170.06, Florida Statutes, there shall be made available in the City Clerk's Office 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.

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.