

Chapter 35

BUSINESS IMPROVEMENT DISTRICTS

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Chapter 35**BUSINESS IMPROVEMENT DISTRICTS****Article 1. General Provisions.****Section 35-1. Definitions.**

The following definitions shall apply for the purposes of this chapter.

- (1) "Assessed value of real property" means the gross value of a parcel of land, as defined below, as assessed by the County's real property tax office, including the assessed value of any improvements thereon.
- (2) "Bonds" means special improvement district bonds (including refunding bonds) issued pursuant to this chapter.
- (3) "Bond ordinance" means an ordinance of the council, which authorizes bonds.
- (4) "Business improvement district" or "district" means a district of land established by the County pursuant to this chapter for providing and financing supplemental services and improvements.
- (5) "County" means the County of Hawai'i.
- (6) "County clerk" means the County clerk of the County of Hawai'i.
- (7) "Costs of supplemental improvements" means the following:
 - (A) Cost of acquiring, constructing, installing, improving, or rehabilitating supplemental improvements;
 - (B) Cost of acquiring land or right-of-way for supplemental improvements;
 - (C) Payment of any water, sewer, or other utility connection fee necessary for supplemental improvements;
 - (D) Payment of fees and expenses for planning, architectural, engineering, inspection, legal, financial, or other consultants for supplemental improvements;
 - (E) Reimbursement of an advance of funds for acquiring, constructing, installing, improving, or rehabilitating supplemental improvements;
 - (F) Contribution to a reserve fund for the payment of debt service on bonds issued to finance the costs of supplemental improvements;
 - (G) Not more than two years of interest on bonds issued to finance the costs of supplemental improvements; or
 - (H) Costs of issuance related to the issuance of bonds issued to finance the costs of supplemental improvements, including, but not limited to, payment of legal fees and expenses (including bond counsel), trustee fees and expenses, bond insurance premium, letter of credit, or other credit enhancement fees and expenses.
- (8) "Costs of supplemental services and improvements" means the following:
 - (A) Cost of obtaining the supplemental services and improvements other than costs of supplemental improvements financed from the proceeds of bonds;
 - (B) Payment of any water, sewer, or other utility connection fee necessary for supplemental services and improvements;
 - (C) Payment of fees and expenses for planning, architectural, engineering, inspection, legal, financial, or other consultants for supplemental services and improvements; and
 - (D) Reimbursement of an advance of funds for the costs of obtaining supplemental services and improvements.
- (9) "District" means the same as business improvement district.

- (10) "District association" means an association established pursuant to section 35-18.
- (11) "District board" means the board of directors of a district association.
- (12) "Financing supplemental services and improvements by a district" or "financing supplemental services and improvements" means paying for the costs of supplemental services and improvements through the special assessment levied within a district or paying the costs of supplemental improvements from the proceeds of bonds.
- (13) "Incidental expenses of a district" means the following:
 - (A) Administrative expense of the County associated with the proceedings undertaken pursuant to this chapter or collection of special assessments;
 - (B) Management and administrative costs incurred by the district association; and
 - (C) Any other expense incidental to the creation or operation of a district.
- (14) "Land" or "parcel of land" means the real property identified by a tax map key parcel number within the district. For purposes of sections 35-13, 35-34, and 35-42, apartments of a condominium property regime shall be deemed to be one parcel of land.
- (15) "Landowner" or "owner of land" means the owner to whom the real property tax is assessed as shown on the real property tax assessment list, which may be the fee simple owner and/or the lessee of land, regardless of whether such owner is exempt from the payment of such tax. Each parcel of land shall be deemed to have one fee simple owner and one lessee of land, if any, even if owned by a corporation, partnership, joint tenancy, tenancy by the entirety, tenancy in common, or other group of persons. The real property tax assessed value of such parcel of land shall be counted once for purposes of determining the aggregate value of all land in a district or proposed district as provided in sections 35-13, 35-34, and 35-42, even if there is a fee simple owner and a lessee of land for a parcel of land.
- (16) "Majority" means more than fifty percent.
- (17) "Ordinance of annexation" means an ordinance that annexes additional land to a district.
- (18) "Ordinance of consideration" means an ordinance that changes the authorized supplemental services and improvements, the supplemental improvements to be financed, the rate or apportionment of a special assessment, or the boundaries of the district other than an annexation provided in article 5, or that requires the levy of a new special assessment.
- (19) "Ordinance terminating the district" means an ordinance that terminates a district at the expiration of the then occurring five-year term.
- (20) "Supplemental improvements" means any of the undertakings itemized in section 35-3(b).
- (21) "Supplemental services and improvement area" means an area within a district as set forth in section 35-11(a).
- (22) "Supplemental services and improvements" means a supplemental service and/or improvement referred to in section 35-3.

(Ord. No. 04-94, sec. 1.)

Section 35-2. Provision of alternate method of financing supplemental services and improvements.

Pursuant to section 46-80.5, Hawai'i Revised Statutes, the council may use the provisions of this chapter in addition to, in combination with, or in lieu of any other law for or related to the creation of improvement districts, the levying, assessment, and collection of special assessments, the financing of supplemental services and improvements, the issuance of bonds, or other matters covered by this chapter.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-3. Types of supplemental services and improvements.

- (a) A district may be established to provide and finance supplemental services and improvements as follows:
- (1) To provide for and finance additional maintenance, security or other additional services required for the enjoyment and protection of the public and the promotion and enhancement of such district to restore or promote business activity whether or not in conjunction with improvements authorized by this section including:
 - (A) Services to enhance the security of persons and property within the district;
 - (B) Landscaping services;
 - (C) Enhanced sanitation services;
 - (D) Services promoting and advertising activities within the district;
 - (E) Marketing education for businesses within the district; and
 - (F) Decorations and lighting for seasonal and holiday purposes.
 - (2) To provide and finance, to the extent permitted by law, supplemental improvements located on or within the County or the district which will restore or promote business activity in the district, including:
 - (A) Construction and installation of landscaping, planting and park areas;
 - (B) Construction of lighting facilities;
 - (C) Construction of physically aesthetic and decorative safety fixtures, equipment and facilities;
 - (D) Construction of improvements to enhance security of persons and property within the district;
 - (E) Construction of pedestrian overpasses and underpasses and connections between buildings;
 - (F) Closing, opening, widening or narrowing of existing streets;
 - (G) Construction of ramps, sidewalks, plazas, and pedestrian malls;
 - (H) Rehabilitation or removal of existing structures as required;
 - (I) Removal and relocation of utilities and utility vaults as required;
 - (J) Construction of parking lot and parking garage facilities; and
 - (K) Construction of fixtures, equipment, facilities and appurtenances as may enhance the movement, convenience and enjoyment of the public and be of economic benefit to district properties such as: bus stop shelters; benches and street furniture; booths, kiosks, display cases and exhibits; signs; receptacles; canopies; pedestrian shelters and fountains.
 - (3) To provide for the operation, maintenance, removal and replacement of any supplemental service or improvement.
- (b) Any supplemental service or improvement undertaken by a district shall conform with all applicable laws, rules and regulations. It is the intent of the council that the level of services being provided by the County in a district as of the effective date of the ordinance establishing such district be unaffected by that ordinance or the levying of the special assessments. The ordinance establishing such district shall describe such level of services.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-4. Payment of existing special assessments.

A district may pay in full all amounts necessary to eliminate or reduce any special assessment liens.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-5. Advances of funds, work, or property in kind.

After the formation of a district, the district board may accept advances of funds, work, or property in kind from any source. The district board may enter into an agreement with the person or entity advancing the funds, work, or property in kind to repay all or a portion of the funds advanced or to reimburse the person or

entity for the value or cost, whichever is less, of the work or property in-kind, as determined by the district board, with or without interest; provided that the proposal to repay the funds or reimburse the value or cost of the work or property in kind is included in the ordinance of formation for the district. Any such agreement shall not constitute a debt or liability of the County or be payable from sources other than the proceeds of the special assessments levied pursuant to this chapter.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-6. Superiority over conflicting provision of other ordinance.

When any provision of this chapter conflicts with any other provision or ordinance, the provision of this chapter shall prevail.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-7. Limitation on challenges.

Pursuant to section 46-80.5(d), Hawai‘i Revised Statutes, no action or proceeding to object to or question the validity of or enjoin any ordinance, action, or proceeding undertaken pursuant to this chapter (including the liability for or the determination of the amount of any assessment levied with respect to any property or the levy or assessment thereof) shall be maintained unless begun within thirty days of the effective date of the ordinance, determination, levy, assessment, or other act, as the case may be.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-8. Construction of chapter.

This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, or informality and no neglect or omission of any officer in any procedure taken under this chapter which does not directly affect the jurisdiction of the County to create a district for the provision of supplemental services and improvements shall void or invalidate such proceeding or any levy for the costs of such services or improvements.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-9. Validity of proceedings.

The failure of any person to receive a notice, ordinance, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter or prevent the council from proceeding with any hearing so noticed or other action.

(2004, Ord. No. 04-94, sec. 1.)

Article 2. Proceedings to Establish a District.

Section 35-10. Institution of proceedings.

- (a) Proceedings for the establishment of a district may be instituted by the council on its own initiative or by the council at the request of the mayor.
- (b) Proceedings for the establishment of a district shall be instituted by the council after receipt by the County clerk of a petition requesting the institution of the proceedings signed by landowners owning lands within the proposed district that have a real property tax assessed value of at least twenty-five percent of the total real property tax assessed value of all land in the proposed district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-11. Ordinance establishing the district.

- (a) If the council determines to establish a district, it shall do so by ordinance. The ordinance establishing the district shall at least do all of the following:
- (1) State that a district is established under the terms of this chapter.
 - (2) State the name of the district in substantially the following form: "County of Hawai'i Business Improvement District No. ____." One or more additional descriptive words may be used in the name of the district to indicate its geographic area.
 - (3) State that the initial term of the proposed district is for five years, which is automatically renewed unless an ordinance of termination is adopted in which case operations of the district shall cease although the term shall not expire until all debt service on bonds and incidental expenses and supplemental services expenses related thereto are fully paid or irrevocable provision for such payment has been made.
 - (4) List the parcels of land to be assessed within the district identified by tax key number.
 - (5) State the general boundaries of the district and/or provide a map generally showing the same. Should any discrepancy exist between the map and the description of the boundaries of the district, the map shall control.
 - (6) State the supplemental services and improvements to be provided and financed by the district and the total annual amount proposed to be expended for the supplemental services and improvements in the first operating year. If the incurring of incidental expenses is proposed, the ordinance shall identify the estimated expenses.
 - (7) Specify the principal amount of bonds to be issued, if any, to finance supplemental improvements in the district.
 - (8) State the incidental expenses to be paid from the special assessment.
 - (9) If a service area within the district is proposed to be established, state and describe the boundaries of the proposed service area, the name proposed for the service area, the supplemental services and improvements proposed to be financed by the district for the service area, and to what extent it is proposed that the district special assessments will be used in the service area for purposes of financing such services and improvements.
 - (10) State the rate and method of apportionment pursuant to which the first year's special assessment is to be levied.
 - (11) Prescribe the procedures for approval by the appropriate agency of the County for the design, plans and specifications of any supplemental improvements to be undertaken in a district.
 - (12) Include any other information required by section 46-80.5, Hawai'i Revised Statutes, or this chapter.
- (b) When the ordinance establishing the district is passed on second reading, the council shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the council so determines, it shall make a finding to that effect. The finding shall be final and conclusive.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-12. Mailed notice of hearing.

- (a) The council shall fix the time and place for a hearing on the proposed ordinance establishing the district. The date of the hearing shall not be less than thirty or more than ninety days from the date of introduction of the proposed ordinance.
- (b) In addition to the public notice given pursuant to applicable law, the County clerk shall also send by first-class mail notice of the council public hearing to each owner of land proposed to be included and assessed in the proposed district. The notice shall be sent to the same address to which the real property

tax assessment notice is sent. When more than one person is listed as fee owner or as lessee, one notice sent to one fee owner and to one lessee, as applicable, shall be sufficient for this subsection. The notice shall be mailed at least fifteen days before the council public hearing and shall contain the following information:

- (1) A summary of the ordinance establishing the district and the fact that the ordinance and the district plan are on file in the County clerk's office for public inspection;
 - (2) The time and place of the first public hearing on the establishment of the district;
 - (3) A statement that, at the hearing, the testimony of all interested persons and landowners for or against the establishment of the district, the extent of the district, and the levy of a special assessment will be heard; and
 - (4) A summary of the protest procedure and the form of any protests.
- (c) Failure to give notice to any owner or failure of any owner to receive such notice shall not affect the validity or effectiveness of the hearing or any other proceedings taken under this chapter or any special assessment levied under this chapter if the council determines that a reasonable effort was made to give such notice. The council's determination shall be final and conclusive.
- (d) The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed changes or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed ninety days from the date of the original hearing. At the conclusion of the hearing, the council, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may approve the ordinance establishing the district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-13. Protest by a majority or more.

- (a) Protests against the proposed ordinance establishing the district may be made in writing by landowners and if made shall be in such form as may be prescribed by the County clerk. All written protests shall be filed with the County clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing by the owner who protested at any time before the conclusion of the hearing.
- (b) If the landowners owning lands proposed to be assessed within the district that have a real property tax assessed value of fifty-one percent or more of the total real property tax assessed value of all land proposed to be assessed in the district or if a majority of the owners of land proposed to be assessed in the district file written protests with the council before or at the public hearing against the proposed ordinance establishing the district and if protests are not withdrawn so as to reduce the amount of the protests to less than a majority, the proceedings to create the specified district shall cease. No proceedings to create the district shall again be undertaken for a period of ninety days from the date on which proceedings cease.
Council may continue the public hearing or recess the meeting to provide the County clerk time to count the protests and any withdrawals.
- (c) For the purpose of determining whether the majority of the owners of land have filed protests, the owner of each apartment in a condominium property regime that is specially assessed or proposed to be specially assessed shall have a vote equal to the following fraction: $\frac{1}{\text{the number of apartments in the condominium property regime which are, or are proposed to be, specially assessed}}$.
- (d) For the purpose of a protest regarding a parcel of land for which a fee owner and lessee appear on the real property assessment list, a protest by the fee owner, the lessee, or both, shall be counted as a protest for that parcel of land.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-14. District boundaries.

- (a) A special improvement district may include areas of land that are not contiguous.
 - (b) Land may be included in more than one special improvement district.
- (2004, Ord. No. 04-94, sec. 1.)

Section 35-15. District term.

The initial term of a district shall be for five years unless earlier terminated under article 6. The term shall automatically renew for additional five-year terms unless an ordinance terminating the district is adopted, in which case the operations of the district shall cease except for payment, or providing irrevocably for payment, of all debt service on bonds, supplemental services expenses and incidental expenses related thereto.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-16. Financing of supplemental services and improvements; payment of debt service on any bonds issued to finance improvements; payment of incidental expenses identified in ordinance establishing the district.

- (a) Only the expenses of supplemental services and improvements identified in the ordinance establishing a district may be paid from the special assessments levied within a district.
 - (b) Only the debt service on any bonds issued to finance costs of supplemental improvements within the district and identified in the ordinance establishing the district may be paid from the special assessments levied within a district.
 - (c) Only the incidental expenses identified in the ordinance establishing the district may be paid from the special assessments levied within a district.
- (2004, Ord. No. 04-94, sec. 1.)

Section 35-17. Designation of supplemental service and improvement area.

For the purpose of financing specified supplemental services and improvements, the council may designate a portion of a business improvement district as a supplemental service and improvement area. The designation shall be made in the ordinance establishing the district or an amendment thereto. A specified supplemental service and improvement area shall be known as "Service Area No. _____ of County of Hawai'i Business Improvement District No. _____." After the designation of a service area, all proceedings to levy assessments for the financing of the specified supplemental services and improvements shall apply only to the service area, except to the extent otherwise provided in the ordinance establishing the district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-18. District association.

- (a) There shall be a district association for each business improvement district established pursuant to the provisions of this chapter. The district association shall be a nonprofit corporation and shall have one or more classes of membership, voting or nonvoting. The purpose of the association shall be the carrying out of such activities as may be prescribed in the district plan. The articles of incorporation or bylaws of such association shall provide for voting representation of fee simple owners and lessees of land within the district and may provide that the votes of members who are owners of land be weighted in proportion to the assessment levied or to be levied against the parcels of land within the district and that members whose properties are exempt from the assessment are nonvoting members. Any board or association established for the purposes of carrying out the management and activities of the business improvement district shall neither be deemed to be a government department, agency, or a County, nor to be performing services on behalf of a government department, agency or County.

- (b) The district board shall be composed of representatives of fee simple owners, lessees of land, and tenants of commercial space within the district; provided, however, that not less than a majority of the district board members shall represent fee simple owners and lessees of land; and provided further that tenants of commercial space within the district shall also be represented on the district board. The district board shall also include the following, all of whom shall serve as the incorporators of the association pursuant to the Hawai'i Nonprofit Corporations Act:*
- (1) The director of public works or the director's designated representative, who shall be a nonvoting member;
 - (2) The director of finance or the director's designated representative, who shall be a nonvoting member;
 - (3) The mayor or the mayor's designee, who shall be a voting member; and
 - (4) The council member of the district within which the majority of the land area within which the district is located or the council member's designated representative, who shall be a voting member.
- (c) The district association may be incorporated prior to the effective date of any district established pursuant to this chapter.
- (d) In addition to such other powers as are conferred to it by law or this chapter, the district board shall have the power to carry out the activities prescribed in the district plan, including but not limited to:
- (1) Determining the scope and specifications for the performance standards;
 - (2) Letting contracts for the supplemental services or for the management of operations of the district;
 - (3) Entering into contracts for the development of plans, design, construction and/or renovation of supplemental improvements; and
 - (4) Adopting the annual budget for the district.

(2004, Ord. No. 04-94, sec. 1.)

Editor's Note: The Hawai'i Nonprofit Corporations Act is codified at chapter 414D, Hawai'i Revised Statutes.

Section 35-19. Financial records.

- (a) The district board shall maintain financial records regarding the operation of the district and the contracts for supplemental services and improvements.
- (b) The district board shall make such financial records available to the public during regular business hours upon reasonable notice to the district board.
- (c) The council, by the ordinance establishing the district, may have the financial records audited by a certified public accountant and the audit report made available to the council and the public.

(2004, Ord. No. 04-94, sec. 1.)

Article 3. Assessments.

Section 35-20. Assessment apportionment.

An assessment levied pursuant to this chapter may be based on benefit received by a parcel of land, the cost of making a supplemental service available to a parcel of land, the cost of supplemental services and improvements benefiting a parcel of land, the stage or type of development or use of a parcel of land, the happening of one or more specified events related to the development or improvement of all or certain parcels of land, or any other reasonable basis or formula as determined by the council. Any determination of the reasonableness of any assessment or the rate or method of the apportionment thereof by the council in the ordinance establishing the district shall be final and conclusive.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-21. Assessment levy.

- (a) During the first assessment year, assessments shall be levied and apportioned pursuant to the rate and method specified in the ordinance establishing the district. Prior to the commencement of the second and each subsequent assessment year, the district board shall prepare and submit a report to the council that shall include the anticipated surplus or deficit from the preceding assessment year as well as any proposed new rate or method of assessment for the next assessment year. The report shall be due by the date set in the ordinance establishing the district or, if the ordinance does not include such a date, the thirtieth day preceding the commencement of the next assessment year.
- (1) If the proposed assessment for an assessment year does not exceed one hundred ten percent of the preceding assessment year's total annual assessment, the new rate based upon the method of assessment specified in the ordinance establishing the district shall take effect upon the new assessment year.
 - (2) If the proposed assessment for an assessment year exceeds one hundred ten percent of the preceding assessment year's total annual assessment, the district board may recommend to the council a change to the rate or method of apportionment of an existing assessment for a district and the recommendation shall be accompanied by a justification and proposed ordinance of consideration.
 - (3) The council shall review and may approve the ordinance of consideration in accordance with this article.
- (b) The district board shall have the power to:
- (1) Determine the annual amount due from each landowner subject to the assessment; and
 - (2) Make an adjustment to the annual amount due when required by the assessment base or formula in the applicable ordinance establishing the district.
- (c) An owner of land who was not entitled to protest a proposed ordinance under sections 35-13, 35-34, or 35-42 shall not be subject to an assessment levied on that owner's land pursuant to such ordinance.
- (d) Assessments shall be levied only as long as needed to pay costs of supplemental services and improvements, debt service and incidental expenses.
- (2004, Ord. No. 04-94, sec. 1.)

Section 35-22. Exemptions.

The properties owned by the United States except for property and leases of government property subject to real property taxation under sections 19-84, 19-85, and 19-86, shall be exempt from any assessment. The properties owned by the State of Hawai'i and the County, except for property and leases of government property subject to real property taxation under sections 19-84, 19-85, and 19-86, may be exempt from any assessment. No other properties or entities within a district shall be exempt from the assessment unless expressly exempted in the ordinance establishing the district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-23. Assessment payment and collection.

- (a) The director of finance shall collect the assessment for a district on a basis to be agreed upon by the County, through its director of finance, and the district board. The director of finance shall deposit all moneys so collected in an account for the district in the general trust fund unless another County fund is identified as the depository in the ordinance establishing the district.
- (b) All assessments levied shall be due and payable according to terms established by the district board.
- (c) Failure to pay the amount assessed when due shall thereafter bear penalty and interest at rates and terms determined by the district board. Any penalties and interest collected shall be deposited in that district's fund.

- (d) The director of finance may deduct from the assessments collected the administrative expenses directly incurred in collection.
 - (e) Assessments collected shall be transmitted to the district within fifteen days after the date that they are due and payable to the County.
 - (f) By a date set in the ordinance establishing the district or written agreement between the district board and County, the director of finance shall prepare and submit a report to the district board summarizing the assessments collected or that remain unpaid by parcel of land and landowner, the amount of interest and penalties collected, the amount of moneys paid out for district purposes, and the amount of administrative expenses directly incurred in the collection of assessments which were deducted from the amounts collected.
- (2004, Ord. No. 04-94, sec. 1.)

Section 35-24. Assessment lien.

- (a) The assessment levied on a parcel of land and the applicable penalty, interest and costs of collection shall be a lien against the land and improvements of the parcel of land. The lien shall attach from the effective date of the ordinance establishing a district and levying the assessment on the parcel of land and shall be extinguished when the assessment and any applicable penalty, interest and costs of collection are fully paid or terminated.
 - (b) The lien of the assessment shall have priority over all other liens, except the lien of general real property taxes and shall be on a parity with the lien of assessments levied under sections 46-80 and 46-80.1, Hawai'i Revised Statutes, and chapter 32 herein. All liens of assessments made pursuant to this chapter shall be on a parity as to each other without regard to when made or for what purpose.
 - (c) If any assessment is not paid when due, the department of finance may, after not less than two months of delinquency, foreclose the lien of assessment in order to collect the delinquent amount and any penalty, interest, and costs, in the same manner as the foreclosure of the lien of real property taxes.
 - (d) In any event, the department of finance shall foreclose the lien before the end of the sixth year of a delinquency.
- (2004, Ord. No. 04-94, sec. 1.)

Section 35-25. Assessment notice to owners of land.

For the first assessment year of a district, notices of the assessments shall be sent to all assessed landowners at the address shown on the real property tax assessment list. The notice shall be sent by the date set in the ordinance establishing the district or, if the ordinance does not include such a date, by the date agreed to by the district board and County. Each notice shall set forth the amount of the assessment levied, the rate and method of apportionment of the assessment, and the date when the assessment is due. Failure to give or receive such notice to or by any landowner shall not affect the validity of the assessment nor entitle the landowner to an extension of time within which to pay the assessment.

After the first assessment year, notice of assessments may be sent annually to the assessed landowners; provided, however, that the date of such annual notice may be adjusted by the County in accordance with the ordinance establishing the district.

The notices of assessment for the first year and any subsequent year shall be sent by the director of finance or by the district association on behalf of the director if so agreed to by the director and district board.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-26. Assessment notice to prospective buyer or lessee of parcel of land.

Before entering into an agreement to sell or lease a parcel of land subject to an assessment levy and lien, the landowner shall notify the prospective buyer or lessee of the existence of the levy and lien in writing. Failure to give or receive such notice to or by any landowner shall not affect the validity of the assessment nor entitle the landowner to an extension of time within which to pay the assessment.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-27. Assessment obligation for parcel of land acquired by County.

If a parcel of land subject to an assessment is acquired by the County by foreclosure, the parcel of land shall be sold as soon as practicable, and the purchaser of the parcel of land shall take title subject to the lien of the assessment and shall be required to pay the assessments then due as part of the purchase price and the assessments becoming due from and after the sale date.

(2004, Ord. No. 04-94, sec. 1.)

Article 4. Proceedings to Change Authorized Supplemental Services, Improvements and Assessment.**Section 35-28. Authorization to change supplemental service and improvements or assessment.**

- (a) Upon request of the district board, the council may change the authorized supplemental services and improvements, the supplemental services and improvements to be financed, the rate or method of apportionment of an assessment, or the boundaries of the district other than an annexation provided in article 5, or the council may require the levy of a new assessment. Such change or new levy shall be accomplished in accordance with this article.
- (b) Any other amendments to the ordinance establishing the district not specifically controlled by this chapter may be accomplished by ordinance but need not comply with the provisions of this article, or article 5 or article 6 of this chapter.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-29. Ordinance for change.

- (a) If the council determines that the public convenience and necessity require a change permitted under section 35-28(a) or require the levy of a new assessment, the council may approve an ordinance for change.

The council shall commence proceedings only upon receipt of a request from the board directors.

- (b) An ordinance for change for a district shall be an amendment of the ordinance establishing the district. The ordinance for change shall contain the pertinent information required by section 35-31.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-30. Request for changes.

The council may commence proceedings to approve an ordinance for change if receiving a request from the district board requesting a change permitted under section 35-28(a) or the levy of a new assessment.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-31. Contents of proposed ordinance for change.

A proposed ordinance for change shall do all of the following:

- (1) State the name of the district;
- (2) Describe the boundaries of the district;

- (3) Specify the proposed change to the supplemental services or improvements, the supplemental services or improvements to be financed or the boundaries;
- (4) Specify whether the issuance and sale of bonds to finance any supplemental improvements is required;
- (5) Specify any proposed new special assessment which will be levied to finance new or existing supplemental services and improvements or payment of debt service for supplemental improvements; and
- (6) Specify any proposed change to the rate or method of apportionment of an existing special assessment.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-32. Notice of hearing on proposed ordinance of consideration.

- (a) The council shall fix the time and place for a hearing on the proposed ordinance of consideration. The date of the hearing shall not be less than thirty or more than ninety days from the date of introduction of the proposed ordinance.
- (b) The County clerk shall publish notice of the hearing in the same manner as required under section 35-12 for notice of a hearing to owners of land within a proposed district. In addition, the County clerk shall mail the notice to each owner of land assessed or proposed to be assessed in the district at least fifteen days before the hearing in the manner described in section 35-12.
- (c) The notice shall contain all of the following information:
 - (1) A summary of the proposed ordinance and a statement that the proposed ordinance is on file in the County clerk's office for public inspection (alternatively, the notice may contain the full text of the proposed ordinance);
 - (2) The time and place of the hearing;
 - (3) A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed changes will be heard; and
 - (4) A summary of the protest procedure and the form of any protest, including the respective rights of an owner and the effect of protests made against the proposed changes.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-33. Protests against the proposed ordinance of consideration.

Protests against the proposed ordinance of consideration may be made in writing by landowners and if made shall be in such form as may be prescribed by the County clerk. All written protests shall be filed with the County clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing by the owner who protested at any time before the conclusion of the hearing.

(Am. 2004, Ord. No. 04-94, sec. 1.)

Section 35-34. Protest by a majority or more.

- (a) If the landowners owning lands which are assessed or proposed to be assessed within the district that have a real property tax assessed value of more than fifty percent of the total real property tax assessed value of all land assessed or proposed to be assessed in the district or if a majority of the owners of land assessed or proposed to be assessed in the district file written protests with the council before or at the public hearing against the proposed ordinance of consideration and if protests are not withdrawn so as to reduce the amount of the protests to fifty percent or less, the ordinance of consideration shall not be approved. No proceedings to include the provision in another ordinance of consideration shall again be undertaken for a period of ninety days from the close of the hearing.
- (b) Sections 35-13(c) and (d) shall apply to protests under this section.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-35. Duration of hearing; determination.

The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed changes or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed ninety days from the date of the original hearing. At the conclusion of the hearing, the council, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may approve the ordinance of consideration.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-36. Filing of notice.

After the effective date of an ordinance of consideration, the director of finance shall provide notice of any change in the district or the special assessment or levy in the manner specified under section 35-25.

(2004, Ord. No. 04-94, sec. 1.)

Article 5. Proceedings to Annex Land.**Section 35-37. Authorization to annex; contiguity not required.**

The council may annex an area of land to an existing district in accordance with this article. The annexed land need not be contiguous to the existing district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-38. Ordinance of annexation.

Upon request of the district board, if the council determines that the public convenience and necessity require the addition of land to an existing district, the council may approve an ordinance of annexation adding the land. The ordinance of annexation adding land to an existing district shall be deemed an amendment of the ordinance of formation for that district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-39. Contents of proposed ordinance of annexation.

(a) A proposed ordinance of annexation shall do all of the following:

- (1) State the name and term of the existing district;
- (2) Describe the boundaries of the existing district and the area proposed to be annexed;
- (3) Identify the supplemental services and improvements provided and financed by the existing district, the supplemental services and improvements to be provided and financed by the area proposed to be annexed, and the supplemental services and improvements to be provided and financed in common by both;
- (4) Specify the proposed new special assessment which will be levied within the area proposed to be annexed; and
- (5) Specify any proposed change to the special assessment within the existing district as a result of the proposed annexation.

(b) The assessment rate in the existing district shall not be increased as a result of annexation proceedings pursuant to this article.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-40. Notice of hearing on proposed ordinance of annexation.

(a) The council shall fix the time and place for a hearing on the proposed ordinance of annexation. The date of the hearing shall not be less than thirty or more than ninety days from the date of introduction of the proposed ordinance.

- (b) The County clerk shall publish notice of the hearing in the same manner as required under section 35-12 for notice of a hearing to owners of land within a proposed district. In addition, the County clerk shall mail the notice to each owner of land assessed or proposed to be assessed in the existing district and area proposed to be annexed. The notice shall be mailed at least fifteen days before the hearing in the manner described in section 35-12.
- (c) The notice shall contain all of the following information:
 - (1) A summary of the proposed ordinance and a statement that the proposed ordinance is on file in the County clerk's office for public inspection (alternatively, the notice may contain the full text of the proposed ordinance);
 - (2) The time and place of the hearing;
 - (3) A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed annexation will be heard; and
 - (4) A summary of the protest procedure and the form of any protests, including the rights of an owner of land and the effect of protests made against the proposed annexation.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-41. Protests against proposed ordinance of annexation.

Protests against the proposed ordinance of annexation may be made in writing by landowners of land in the existing district or by landowners of land in the area proposed to be annexed and, if made, shall be in such form as may be prescribed by the County clerk. All written protests shall be filed with the County clerk before or at the hearing. The council may waive any irregularities in the form or content of any written protest. Written protests may be withdrawn in writing by the owner who protested at any time before the conclusion of the hearing.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-42. Protest by a majority or more.

- (a) If either:
 - (1) The landowners owning lands which are assessed in the existing district that have a real property tax assessed value of fifty percent plus one of the total real property tax assessed value of land specially assessed in the existing district, or
 - (2) The landowners owning lands which are proposed to be annexed and assessed that have a real property tax assessed value of fifty percent plus one of the total real property tax assessed value of land proposed to be annexed and assessed, or
 - (3) More than fifty percent of the owners of lands which are specially assessed in the existing district, or
 - (4) More than fifty percent of the owners of land which are proposed to be annexed and assessed, file written protests with the council before or at the public hearing against the proposed annexation and if protests are not withdrawn so as to reduce the amount of the protests to fifty percent or less, the annexation proceedings shall cease.

Sections 35-13(c) and (d) shall apply to protests under this section.

- (b) If the annexation proceedings cease pursuant to section 35-42(a) above, no proceedings to annex the land shall be undertaken for a period of ninety days from the close of the hearing.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-43. Duration of hearing; determination.

The hearing may be continued from time to time, but shall be completed within thirty days; except that, if the council finds that the complexity of the proposed annexation or the need for public participation requires additional time, the hearing may be continued from time to time for a period not to exceed ninety days from the date of the original hearing. At the conclusion of the hearing, the council, after considering all protests and such other relevant factors (such as the general plan or development plan) as it deems appropriate, may approve or disapprove the ordinance of annexation (in the form in which it was introduced or with such changes as determined by the council and permitted by this part). Thereafter, the County may levy the assessment on the annexed land.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-44. Filing of notice.

After the effective date of an ordinance of annexation, the director of finance shall provide notice of any assessment change or levy in the manner specified under section 35-25.

(2004, Ord. No. 04-94, sec. 1.)

Article 6. Proceedings to Terminate a District.**Section 35-45. Authorization to terminate the district.**

- (a) The council may terminate a district at any time for cause due to the willful misconduct or gross negligence on the part of the district board. The council shall initiate proceedings to terminate the district for cause by a resolution and shall terminate the district by an ordinance.
- (b) The council, on its own initiative, may terminate a district at the expiration of the then occurring five-year term in accordance with this article. The council shall initiate proceedings to terminate a district at the expiration of the then occurring five-year term by a resolution and shall terminate the district by an ordinance.
- (c) The council may terminate a district at any time upon request from the district board. A termination shall be accomplished in accordance with this article.
- (d) Except as set forth herein, the council may not initiate proceedings to terminate a district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-46. Ordinance terminating the district.

- (a) Upon its own initiative or receipt of the request from the district board, both as set forth in sections 35-45, if the council determines that the public convenience and necessity will be promoted by terminating a district, the council may approve an ordinance terminating the district.
- (b) The council shall not approve an ordinance terminating a district:
 - (1) Unless provisions are included to assure the payment of all outstanding debt service on any bonds issued to finance improvements within the district from the assessments or accumulated reserves of the district or as council otherwise deems necessary; and
 - (2) Unless provisions are included to assure the payment of all outstanding incidental expenses and supplemental services expenses accrued for the district from the assessments or accumulated reserves of the district or as council otherwise deems necessary.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-47. Contents of proposed ordinance terminating the district.

A proposed ordinance terminating the district shall do all of the following:

- (1) State the name of the district;
- (2) Describe the boundaries of the district;

- (3) Identify the proposed termination date of the district;
- (4) Give a narrative justification for the proposed termination;
- (5) With respect to bonds issued to finance improvements for the district:
 - (A) Guarantee the payment of the bonds before the termination of the district; or
 - (B) Establish a method by which the bonds will be paid after the termination of the district;
- (6) With respect to incidental expenses accrued for the district:
 - (A) Guarantee the payment of the incidental expenses before the termination of the district; or
 - (B) Establish a method by which incidental expenses, if any, will be paid after the termination of the district; and
- (7) With respect to supplemental services expenses accrued for the district:
 - (A) Guarantee the payment of the supplemental services expenses before the termination of the district; or
 - (B) Establish a method by which supplemental service expenses, if any, will be paid after the termination of the district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-48. Notice of hearing on proposed ordinance terminating the district.

- (a) The council shall fix the time and place for a hearing on the proposed ordinance terminating the district. The date of the hearing shall not be less than thirty or more than ninety days from the date of introduction of the proposed ordinance.
- (b) The County clerk shall publish notice of the hearing in the same manner as required under section 35-12 for notice of a hearing to institute proceedings. In addition, the County clerk shall mail the notice to each owner of land assessed in the district at least fifteen days before the hearing.
- (c) The notice shall contain all of the following information:
 - (1) A summary of the proposed ordinance and the fact that the proposed ordinance is on file in the County clerk's office for public inspection (alternatively, the notice may contain the full text of the proposed ordinance);
 - (2) The time and place of the hearing; and
 - (3) A statement that, at the hearing, the testimony of all interested persons and landowners for or against the proposed termination will be heard.

(2004, Ord. No. 04-94, sec. 1.)

Article 7. Bonds.

Section 35-49. Bond ordinance.

- (a) Whenever the council deems it necessary or appropriate that business improvement district bonds be issued to finance the cost of supplemental improvements or to reimburse the cost thereof previously paid, the council may authorize the issuance of bonds. The issuance shall be authorized by a bond ordinance approved with or after the approval of the ordinance establishing the district and levying the assessment to finance the costs of supplemental improvements. The bond ordinance shall provide for the following:
 - (1) The issuance of the bonds in one or more series;
 - (2) The date the bonds shall bear;
 - (3) The maturity date or dates of the bonds, which shall not be more than thirty years after the issuance date of the bonds;
 - (4) The rate or maximum rate of interest on the bonds, which shall not exceed the maximum rate permitted by law and which may be fixed or variable and simple or compound;
 - (5) The time or times at which interest shall be payable;

- (6) The denomination of the bonds;
 - (7) The form of the bonds;
 - (8) The conversion or registration privileges carried by the bonds;
 - (9) The rank or priority of the bonds;
 - (10) The manner of execution of the bonds;
 - (11) The medium of payment of the bonds;
 - (12) The place or places of payment;
 - (13) The terms of redemption and the redemption price or prices to which the bonds are subject;
 - (14) The pledge or assignment of all or part of the assessments collected from the district thereof, the liens securing such assessments, or any other funds which are intended by the council to secure payment of the bonds. The pledge shall be superior to all other claims on the assessments (except to the extent otherwise provided in this chapter and the bond ordinance);
 - (15) The establishment and handling of a separate special fund or funds to pay or secure the bonds or to pay for the costs of supplemental improvements or incidental expenses;
 - (16) The obligations in which may be invested the proceeds of the bonds and any other funds (including assessments) pledged to secure payment of the bonds; and
 - (17) Any other provisions for the issuance, payment, security, credit enhancement, handling of funds, default, remedy, or other matter related to the bonds, which the council deems appropriate.
- (b) The bond ordinance may provide that any or all of the terms listed in this section or elsewhere in this article may be determined and fixed by the director of finance at or prior to the delivery of the bonds or in an indenture, trust agreement, or fiscal agent agreement between the County and a corporate trustee or fiscal agent located within or without the State.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-50. Costs includable in bond principal.

The principal amount of bonds authorized to be issued may include all costs and estimated costs of supplemental improvements and related expenses.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-51. Minimum value-to-lien ratio.

The principal amount of bonds authorized to be issued for a district shall not exceed one-third of the value of the real property upon which an assessment is levied for payment of the debt service on the bonds. The “value of the real property” shall be the fair market value of the land, the improvements thereon and the improvements, within the meaning of section 35-3, to be constructed within the district, as shown by the real property tax assessed values of the subject property.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-52. Covenant to pursue foreclosure action to collect delinquent special assessments.

The director of finance may covenant, for the benefit of bond owners, to commence and diligently pursue to completion any foreclosure action regarding delinquent assessments. The covenant may specify a deadline for commencement of the foreclosure action and any other terms and conditions the director of finance determines reasonable regarding the foreclosure action.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-53. Signing of bonds.

Unless otherwise specified in the bond ordinance, the bonds shall be signed by the mayor and countersigned by the director of finance or the director's deputy. Signatures on the bonds may be manual or facsimile. If any officer whose signature appears on the bonds vacates the office before the delivery of the bonds, the signature shall be as effective as if the officer had remained in office.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-54. Manner of sale.

The director of finance may sell bonds at public or private sale at the times, for the price or prices, and in the manner the council determines to be appropriate and in the public interest (such determination being final and conclusive).

(2004, Ord. No. 04-94, sec. 1.)

Section 35-55. Bond fund.

All of the collections for payment of principal of and interest on bonds and related expenses shall be paid into a district bond or reserve fund and shall be used solely for the payment of the principal of and interest on the outstanding bonds of the district and related expenses, all as provided in the bond ordinance.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-56. Refunding bonds.

- (a) The council may authorize the issuance of bonds to refund any or all of the district bonds outstanding that have been issued pursuant to this article. The refunding bonds shall be authorized by a bond ordinance.
- (b) Refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Subject to such limitations, the principal amount of the refunding bonds may be more than, less than, or the same as the principal amount of the bonds to be refunded. The principal amount of such refunding bonds shall not count against any maximum amount of bonds authorized in the original bond ordinance.
- (c) The designated costs of issuing refunding bonds shall be paid from proceeds of the refunding bonds, interest earned on such proceeds, or assessments from the district. However, any interest or assessments paid for the designated costs shall be added to the total net interest costs to maturity on the refunding bonds in determining whether the issuance of the refunding bonds complies with subsection (b).

"Designated costs of issuing the refunding bonds" means any of the following costs and expenses designated by the council in the bond ordinance authorizing the issuance of the refunding bonds:

- (1) All expenses incident to the calling, retiring, or paying of the bonds to be refunded and incident to the issuance of refunding bonds, including the charges of any agent in connection with the issuance of the refunding bonds or the redemption or retirement of the bonds to be refunded;
- (2) The interest upon the refunding bonds from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds;
- (3) Any premium necessary in the calling or retiring of the bonds to be refunded;
- (4) Any insurance premium or fee payable to the issuer of a bond insurance policy or letter of credit insuring all or part of the principal and/or interest due on the refunding bonds; and
- (5) Any other incidental expenses related to the issuance or carrying of the refunding bonds or the redemption or refunding of the bonds to be refunded.

- (d) The saving achieved through the issuance of refunding bonds shall be used by the council to reduce the assessment levied in the district.

At the time the council authorizes the issuance of refunding bonds, the council also shall reduce the assessments levied in the district. The reduction shall be made through an ordinance of consideration pursuant to article 4.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-57. Prohibition on issuance of general obligation bonds secured by general credit.

No general obligation bonds secured by the County's general credit shall be issued to finance the costs of improvements identified in an ordinance establishing a district or pay for the incidental expenses of a district.

(2004, Ord. No. 04-94, sec. 1.)

Section 35-58. Debt limit calculation.

Bonds issued under this article, when the only security is the assessments levy or lien in a district, shall be excluded from any determination of the power of the County to issue general obligation bonds or funded debt for purposes of section 13 of article VII of the state constitution.

(2004, Ord. No. 04-94, sec. 1.)

Article 8. Publication Dispensing Devices.

Section 35-59. Applicability.

The provisions of this article shall apply to publication dispensing devices, publication dispensing rack enclosures and publication dispensing rack spaces located upon sidewalks and other public property within a business improvement district for which the district association has been issued a permit pursuant to chapter 22 of this Code.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-60. Definitions.

As used in this article, unless another meaning is clear from the context, the following terms shall have the following meaning:

"Authorized association" means a district association, as defined in section 35-1, that has been issued a district-wide permit pursuant to chapter 22, article 3, division 3 of this Code for the installation of publication dispensing racks.

"Authorized association-installed," "authorized association shall install," "installed by the authorized association," or words of similar import mean installation, undertaken by or caused to be undertaken, by an authorized association.

"Director" means the director of the department of public works.

"District" means the business improvement district governed by a certain authorized association.

"Insert," when used as a noun, means a publication dispensing rack insert.

"Install" includes construct, erect, fabricate and affix.

"Location" means a site designated by the director for placement of association-installed publication dispensing rack enclosures.

"Permit" means a publication dispensing rack space allocation or reallocation invoice issued pursuant to this article.

"Permit period" means the period for which spaces are allocated under section 35-63(c).

"Permittee" means a person, organization, corporation, firm, association or similar entity to whom or to which a publication dispensing rack permit has been issued pursuant to this article.

“Publication” means any written or printed matter, including but not limited to, daily publications, real estate publications or periodical newspapers, and any visitor information publications, but may exclude any “handbill” defined in rules adopted by the authorized association pursuant to section 35-68 if such rules provide that handbills, as so defined, shall be excluded.

“Publication dispensing device” means any stand, box, rack or other device, other than a publication dispensing rack enclosure or a publication dispensing rack insert, used to dispense any publication. For purposes of this definition, a person shall not be deemed a device.

“Publication dispensing rack enclosure” or “enclosure” means a structure installed by the authorized association in the district with spaces in which publication dispensing rack inserts may be inserted.

“Publication dispensing rack insert” means a box, insert or rack with a clear plastic face that is owned by a permittee, that is designed to be inserted into a publication dispensing rack space, and that is constructed to hold and display a publication.

“Publication dispensing rack space” or “space” means an area within a publication dispensing rack enclosure that is constructed to hold a publication dispensing rack insert to display and dispense a publication.

“Publisher” means an owner or authorized agent of the owner of a publication. The authorized association may adopt rules defining the term “owner” or “authorized agent” for purposes of this definition.

“Reallocation” means an allocation of unallocated, abandoned or surrendered spaces to a permittee that takes place during a permit period.

“Sidewalk” means that portion of a street between a curb line or the pavement of a roadway, and the adjacent private or public property line, whichever the case may be, intended for the use of pedestrians, including any setback areas acquired by the County for road widening purposes.

“Unallocated publication dispensing rack space” means a publication dispensing rack space that has not been allocated in the most recent allocation or reallocation.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-61. Publication dispensing rack enclosures.

- (a) A publication dispensing rack enclosure in the district shall contain a minimum of two publication dispensing rack spaces.
- (b) Each publication dispensing rack enclosure shall be designed so that publication dispensing rack inserts inserted therein may meet the standards for such inserts established by the authorized association.
- (c) The authorized association shall label each space within each publication dispensing rack enclosure for the purpose of identification.
- (d) Nothing in this article shall be construed to preclude the authorized association from installing additional publication dispensing rack enclosures to the extent authorized under the authorized association’s permit.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-62. Publication dispensing rack inserts.

- (a) The authorized association shall enforce standards for the size, design, color and material of publication dispensing rack inserts that may be inserted into the authorized association’s publication dispensing rack enclosures pursuant to permit, which shall have been approved by the director.
- (b) No person may place anything other than:
 - (1) A publication dispensing rack insert for which a permit has been issued and meeting the standards established pursuant to subsection (a); and
 - (2) Copies of the publication permitted to be dispensed from the publication dispensing rack insert into a space in a publication dispensing rack enclosure.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-63. Publication dispensing rack space permits.

- (a) Any publisher desiring the use of a publication dispensing rack space in a publication dispensing rack enclosure for purposes of dispensing a publication therefrom shall submit an application for a publication dispensing rack space permit to the authorized association. The authorized association shall determine with the approval of the director, the form of, and provide to interested persons copies of, the publication dispensing rack space permit application form.
- (b) The authorized association may establish by rules approved by director a permit fee to be charged by the authorized association for each publication dispensing rack space.
- (c) The requirement that a copy of the publication be submitted with the application is intended to ensure that the publication exists at the time of the application and the authorized association may not deny a permit for any publication based upon its content. No permit shall be issued for a publication that does not exist at the time of the application.
- (d) The authorized association shall maintain a record of all publication dispensing rack spaces that have been allocated or reallocated, the permittees to which the spaces have been allocated or reallocated, and the publication permitted to be dispensed from the spaces.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-64. Installation, maintenance, and repair of publication dispensing enclosures, spaces, and inserts.

It shall be the responsibility of the authorized association to install, maintain, and repair the publication dispensing rack enclosures, either directly or by contract with a private contractor. Any cost for the installation, maintenance, and repair of the enclosure shall be borne by the authorized association.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-65. Temporary dislocations.

- (a) The authorized association may direct a permittee to remove copies of the permitted publication and the permittee's publication dispensing rack insert from a publication dispensing rack enclosure temporarily during any public, private, or utility construction work conducted on the public sidewalk, the abutting roadway, an adjacent building, or structure or to any utility, when the director determines that the removal is necessary in the interest of public safety.
- (b) The authorized association may also direct a permittee to remove copies of the permitted publication and the permittee's publication dispensing rack insert from a publication dispensing rack enclosure during any installation or repair work on the publication dispensing rack enclosure.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-66. Prohibitions.

The following prohibitions shall apply:

- (1) Other than provided in this article there shall be no publication dispensing device allowed and no person may install or direct another person to install any publication dispensing device on any public property, sidewalk, or right of way within the district.
- (2) Any publication dispensing device installed in violation of this article shall be subject to administrative enforcement including but not limited to removal, fines, cease and desist orders and forfeiture in accordance with section 22-8.2 of this Code.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-67. Liability.

The County shall not be held liable for the installation, maintenance, operation, or management of any publication dispensing device within the district.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-68. Rules.

The authorized association shall adopt rules for the interpretation, implementation and administration of this article, which shall be subject to the approval of the director.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-69. Fees.

All fees collected by the authorized association pursuant to this article or the rules adopted pursuant to section 35-68 shall be accounted for in the financial records maintained by the district board pursuant to section 35-19 and shall be deposited into the account established for the district under this chapter. The financial records of the authorized association including but not limited to all fees collected pursuant to this article shall be subject to review by the public.

(2012, Ord. No. 12-59, sec. 5.)

Section 35-70. Severability.

If any provision of this article or the application thereof to any person or circumstance, is held invalid, the invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of this article are severable.

(2012, Ord. No. 12-59, sec. 5.)