

September 9, 2016

MEMO TO: Don S. Guzman
Council Vice-Chair

F R O M: Traci Fujita *TNT*
Legislative Analyst

SUBJECT: **IMPROVEMENT DISTRICTS** (PAF 15-159)

The purpose of this memorandum is to explain the creation, use, and consequences of improvement districts and possible applications to Paia Town and the Kahului Community Center, as you requested.

Creation of a Special Improvement District

State law authorizes the County to create "special improvement districts" pursuant to Section 46-80.5, Hawaii Revised Statutes, which is attached. The purpose is to "restore or promote business activity" through the provision and financing of an "improvement" or multiple improvements, including "maintenance and security services." The statute says an improvement district may be operated by a nongovernmental "association or board," if authorized by ordinance.

The Council must enact enabling legislation authorizing the creation of special improvement districts. Then each special improvement district is established by a separate ordinance. The existing Improvement District Ordinance, in Title 14, Article 3 of the Maui County Code, predates the State statute on special improvement districts.

Once a special improvement district is created by ordinance, the County may levy and assess a special assessment on property located within the special improvement district to finance the maintenance and operation of the special improvement district and to pay the debt service on any bonds issued to finance improvements within the special improvement district. It is not essential that the property subject to the special assessment be improved or benefitted by the operation and maintenance of the special improvement district or any activity or improvement undertaken for, and financed by, the special improvement district.

Examples of Special Improvement Districts

The County of Maui has not established any special improvement districts. The City & County of Honolulu has established three special improvement

RECEIVED AT EAR MEETING ON 9/13/16
Committee Chair Guzman

September 9, 2016

Page 2

districts. The County of Hawaii has established one special improvement district. The County of Kauai has not established any special improvement districts.

The Waikiki Business Improvement District No. 1 was established in 2000 by Ordinance 00-40. The Waikiki BID encompasses the Kalakaua/Kuhio Corridor, Kalakaua Makai, and Greater Waikiki. Improvements include the Malama Waikiki Crew: Streetscape Maintenance Program and Aloha Ambassadors: Hospitality Services. The Waikiki BID is administered by the Waikiki BID Association.

The Fort Street Mall Business Improvement District No. 2 was established in 2002 by Ordinance 02-48. The general boundary of the Fort Street Mall BID is the length and width of the Fort Street Mall from Beretania Street to Ala Moana Boulevard in Downtown Honolulu. Improvements include information and safety officers and a cleaning and maintenance crew. The Fort Street Mall BID is administered by the Fort Street Mall BID Association.

Most recently, the City & County of Honolulu established the Waikiki Beach Special Improvement District No. 3 last year by Ordinance 15-11. The Waikiki Beach SID includes the Ala Wai Canal/Ala Wai Boat Harbor, Kapahulu Avenue to Kalakaua Avenue and seaward to include the Kapahulu Groin, and the shoreline from the Ala Wai Canal up to and including the Kapahulu Groin, and coastal waters and submerged lands extending 150 feet seaward of the shoreline between the Ala Wai Canal and the Kapahulu Groin. The Waikiki Beach SID was created to focus exclusively on the long-term maintenance and restoration of Waikiki Beach. The Waikiki Beach SID Association was established to execute the responsibilities and activities of the Waikiki Beach SID Plan.

The Chinatown Improvement District in Honolulu is a nonprofit organization, but it is not an improvement district established by the City & County of Honolulu.

The County of Hawaii has created a single improvement district, the Kailua Village Business Improvement District No. 1, which was established in 2007 by Ordinance 07-171. The improvements include: services to enhance public safety through the hiring of information and safety officers; landscaping and enhanced sanitation services through the hiring of "Clean Sweep Crews"; construction and installation of landscaping, lighting, pedestrian pathways and surfaces, and kiosks or other structures for marketing and special events, as well as way-finding and signage to enhance the movement, convenience, and enjoyment of the public; and marketing services including special events to encourage the public's

September 9, 2016

Page 3

use of the district and to introduce the public to the changes being made. The Kailua Village BID is administered by a board of directors.

Consequences of a Special Improvement District

An improvement district provides a means by which revenue can be specifically raised to fund improvements desired for the area. It also allows improvements to be made in the manner and time frame generally decided upon by the improvement district community.

The assessments levied pursuant to the ordinance authorizing the creation of special improvement districts and the ordinance establishing a district shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes.

Possible Special Improvement District for Paia Town Improvements

On May 17, 2016, the Paia Town Association gave a presentation to the Economic Development, Energy, Agriculture, and Recreation Committee on a proposed special improvement district for Paia. The presentation outlined several proposed improvements, including the following: 1) security; 2) daily trash pickup; 3) administrative office space; 4) cleaning and maintenance; 5) semiannual power washing; 6) purchase of trashcans; and 7) administrative costs.

The improvements being proposed for Paia are similar to improvements currently implemented in the City & County of Honolulu and County of Hawaii special improvement districts and would likely satisfy the requirements of State law for restoring or promoting business activity.

The Paia Town Association proposes to include commercial properties located along Baldwin Avenue and Hana Highways within a Paia Improvement District. If these properties were included within the boundaries of a Paia Improvement District, they would be assessed to pay for the proposed improvements. Including commercial properties within a Paia Improvement District is reasonable because the improvements being proposed appear to directly benefit such businesses. Exempting residential properties from a Paia Improvement District may encourage residential property owners to agree with the establishment of the special improvement district.

September 9, 2016

Page 4

Possible Improvement District for Kahului Community Center

You have requested information on a possible improvement district for the Kahului Community Center, a County facility operated by the Department of Parks and Recreation. The Kahului Community Center could utilize an improvement district to implement infrastructure improvements, but it would be different from a *special* improvement district, which can only be established to “restore or promote business activity,” according to HRS Section 46-80.5.

Another State law, HRS Section 46-80.1, authorizes the County to create “community facilities districts.” The possible Kahului Community Center improvement district may satisfy the requirements of this statute.

The existing Improvement District Ordinance authorizes improvement districts for infrastructure improvements, including the establishment, extension, and construction of public recreational facilities. Depending upon the extent of the improvements being considered, the Council may want to consider amending Section 14.38.010, Maui County Code, to expand the authorized improvements to include renovation, repair, and maintenance of public recreational facilities. Also, because the Maui County Code provisions predate State law authorizing community facilities districts, the Council may want to consider updating the ordinance and changing its name to “Community Facilities Districts,” or something similar, so there is a direct reference to HRS Section 46-80.1.

The Kahului Community Center is located within a residential area. If an improvement district were created for improvements to the facility, it would arguably benefit the nearby property owners; they would have an upgraded and modernized recreational facility in their community. However, some property owners may not agree with being responsible for the improvement district assessments because the facility is used regularly by people outside the area who would not be assessed.

I hope this is helpful. Please let me know if you have any questions or need anything else.

Attachment

paf:tntf:15-159a

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 6. County Organization and Administration

Subtitle 1. Provisions Common to All Counties

Chapter 46. General Provisions (Refs & Annos)

Part V. Miscellaneous

HRS § 46-80.5

§ 46-80.5. Special improvement district

Currentness

(a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter 414D, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby.

(b) The county may levy and assess a special assessment on property located within the special improvement district to finance the maintenance and operation of the special improvement district and to pay the debt service on any bonds issued to finance improvements within the special improvement district. Notwithstanding any law to the contrary, in assessing property for a special assessment, the county may implement a methodology as the council of the county deems appropriate. The special assessment may be fixed in an amount or appropriated on a basis as the council of the county deems appropriate, and it shall not be essential that the property subject to the special assessment be improved or benefitted by the operation and maintenance of the special improvement district or any activity or improvement undertaken for, and financed by, the special improvement district.

(c) The county may issue and sell bonds to finance improvements within the special improvement district and the ordinance authorizing the creation of special improvement districts may provide the method, procedure, and type or types of security for those bonds. Each issue or series of bonds shall be authorized by ordinance separate from the ordinance establishing the special improvement district. The bonds shall be in amounts, in denomination or denominations, in form or forms, executed in a manner, payable in place or places and at time or times, bear interest at rate or rates (either fixed or variable), mature on date or dates and provide terms and conditions of redemption, provide security (including the pledge of proceeds of the bonds, special assessments, and the lien therefor), provide for credit enhancement, if any, administration, terms of investment of proceeds of the bonds and special assessment receipts, provide terms of default and remedy, and other terms and conditions, as the council of the county deems necessary or proper. The bonds may be sold in a manner and at price or prices as the council of the county shall determine. Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision, except inheritance, transfer, and estate taxes.

§ 46-80.5. Special improvement district, HI ST § 46-80.5

(d) Notwithstanding any other law to the contrary, no action or proceeding to object to or question the validity of or enjoining any ordinance, action, or proceeding permitted by this section (including the liability for or the determination of the amount of any special assessment levied or the imposition thereof), or any bonds issued or to be issued pursuant to an ordinance enacted as permitted by this section, shall be maintained unless begun within thirty days of the enactment of the ordinance, determination, or other act, as the case may be and, in the case of the assessment, whether the determination or levy, within thirty days after adoption of the ordinance authorizing or amending the assessment formula and, in the case of bonds, within thirty days after enactment of the ordinance authorizing the issuance of the bonds.

(e) Exemptions.

(1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);

(2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);

(3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the leasehold or possessory interest and shall be payable by the lessee;

(4) The redevelopment of the Ala Wai boat harbor shall be exempt from the assessment and any special improvement district requirements authorized by subsection (a); and

(5) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district.

(f) The assessments levied pursuant to the ordinance authorizing the creation of special improvement districts, the ordinance establishing a district, and this section shall be a lien upon the property assessed. The lien 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.

(g) Any board or association established for the purposes of carrying out the activities described in this section shall not be deemed a governmental body. The board and association 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.

Credits

Laws 1999, ch. 107, § 1; Laws 2002, ch. 40, § 2; Laws 2011, ch. 197, § 3, eff. July 1, 2011.

H R S § 46-80.5, HI ST § 46-80.5

§ 46-80.5. Special improvement district, HI ST § 46-80.5

Current through Act 1 (End) of the 2016 Second Special Session, pending classification of undesignated material and text revision by the revisor of statutes. For research tips relating to newly added undesignated material, see Searching and Fields under scope.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.