

AN ORDINANCE TO AMEND ARTICLE VI. AND ADD SEC. 44-154.1 TO THE CITY CODE - NORTH WILMINGTON MARKET STREET BUSINESS IMPROVEMENT DISTRICT

#4467

Sponsor:

Council
Member
Guy

WHEREAS, The City of Wilmington, acting pursuant to the provisions of 22 Del. C. ch. 15, has embraced the use of Business Improvement Districts in Downtown Wilmington and in the Wilmington Riverfront; and

WHEREAS, In North Wilmington, along the North Market Street corridor, is where substantial commercial activity exists in an area that is worthy of reviewing whether a Business Improvement District may be beneficial for this area for the following reasons expressed in the Wilmington City Code as reflected below:

(1) Preserving and enhancing commercial enterprise in Wilmington and in the North Wilmington Market Street area of Wilmington is critical to the long-term financial well-being of the city; and

(2) The availability of enhanced city services within the commercial centers of the city should result in significantly improved street and sidewalk sanitation, facilities and infrastructure maintenance, and public security, serving as a magnet to the consuming public; and

(3) Numerous cities and towns throughout the United States, including Philadelphia, Baltimore, Buffalo and Allentown have successfully funded and witnessed the benefit of such enhancements through the creation of business improvement districts as authorized by state legislative enactments; and

(4) The cost of the enhanced city services provided for within the downtown business improvement district shall be funded exclusively by the principal beneficiaries thereof, the commercial enterprises within the district, thereby avoiding further demand

on the city treasury.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. Wilmington City Code is hereby amended by adding the following material.

Sec. 44-154.1- Establishment of the North Wilmington Market Street Business Improvement District.

- (a) *Purpose.* The creation of the North Wilmington Market Street Business Improvement District is designed to revitalize the City’s Christina Riverfront Commercial District by providing enhanced municipal services without the expenditure of public funds. The district is created pursuant to Chapter 15, Title 22, Delaware Code (hereinafter, the “Enabling Legislation”).
- (b) *Establishment.* The mayor and council hereby create a Business Improvement District to be known as the “North Wilmington Market Street Business Improvement District” (“NWMSBID”), which district shall be bounded, governed and administered in accordance with this section.
- (c) *Geographic boundaries.* The geographic boundaries of the NWMSBID shall include both sides of all designated streets acting as boundaries, to include the full perimeter of all properties fronting on such streets to the rear property lines of all such properties, unless the centerline of a street is specifically designated as the boundary, or unless specifically noted otherwise, and said geographic boundaries are as follows:
 - (1) Beginning at the northern terminus of the Market Street Bridge, thence along North Market Street, across West Lea Boulevard to the North Market Street intersection with the boundary line of the City of Wilmington.
- (d) *Duration of NWMSBID.* The NWMSBID shall have a duration of existence of ten years, unless extended by ordinance for a longer duration prior to the expiration of the first ten years.
- (e) *Management company.* The NWMSBID shall be governed by a management company specifically authorized by this ordinance and organized under the not-for-profit corporation provisions of the Delaware General Corporation Law, which Management Company shall be known as “NWMSBID Management Company” (hereinafter, the “company”).
 - (1) *Certificate of incorporation.* The city solicitor as incorporator of the company shall prepare and cause the Certificate of Incorporation attached hereto as Exhibit 2 to be filed with the Secretary of State of Delaware within 30 days of the effective date of this Ordinance.
 - (2) *Membership of company and board of directors.* The company shall be a non-profit membership corporation, managed by a board of directors, at least five of whom shall be representatives or designees of owners of commercial property

within the NWMSBID. The board shall also include the following five non-voting ex officio members: the mayor, or a designee of the mayor's office, the city council president (or his designee), and the directors of the departments of public works and finance and the chief of police (or their respective designees). The terms of all voting directors shall be two years, with no term limitations. The board shall adopt by-laws and secure Federal 501(c) tax-exempt status.

- (3) *Company reports.* The company shall file with the Director of Finance, Treasurer, and the Clerk of Council of the City of Wilmington (i) quarterly written reports within 30 days of the close of each fiscal quarter of the company and (ii) an annual cumulative written report within 90 days of the end of the company's fiscal year. Each report shall include, at a minimum, a detailed financial statement and a detailed summary of the services provided to the NWMSBID during the period reported. Each annual report also shall include a list of the assessments paid or owed by each assessable property in the NWMSBID. All annual financial statements shall have been audited in accordance with generally accepted auditing standards by a firm of certified public accountants prior to submission to the finance department and the clerk of council. Each quarterly written report and annual written report shall be approved by the board of directors of the company prior to its filing with the Director of Finance, Treasurer, and the Clerk of Council of the City of Wilmington.
- (4) *Public review and comment.* The company's annual operating plan, annual operating budget, and annual financial statements as contained in the annual cumulative written report provided for in subsection (3) above shall be submitted for review and comment to the Mayor and the Clerk of the City Council (who shall provide copies to the President and each Member of City Council as well the 1st District, 2nd District, and 3rd District Neighborhood Planning Council.
- (5) *Annual review by mayor and city council.* Not less than annually, the mayor and city council shall review the performance of the company and shall prepare for public inspection a report which certifies that:
 - (a) The company is in compliance with its enabling ordinance, this section of this chapter of this article, its Certificate of Incorporation and By-Laws and the provisions of 22 Del. C, Ch. 15;
 - (b) The company is fiscally sound and has provided an annual audit report using generally accepted auditing standards; and
 - (c) The company has not discriminated against any person based upon race, sex, national origin, religion, age or disability.
- (6) *Duration.* The company shall file a Certificate of Dissolution within 30 days of the earlier of (i) the date of termination of the NWMSBID pursuant to subsection (d) above or (ii) the revocation by ordinance adopted by two-thirds of all the members of council of the company's authority pursuant to 22 Del, § 1504(b)(5) to assess assessable properties within the NWMSBID, provided that

any such revocation ordinance may defer for up to one year the date by which the Certificate of Dissolution must be filed.

- (f) *Services.* Except as limited by the enabling legislation, the NWMSBID may use proceeds of the special assessments to provide for the following services, directly or by contract: private security monitoring services; private site and sidewalk cleaning; sanitation services; acquisition, replacement, painting and maintenance of street furniture; snow removal; garbage removal; litter and debris removal; management, promotional, marketing, advertising and retail development services; landscape acquisition, replacement and maintenance; recreation and cultural activities; and any other services, activities, or improvements which will improve the safety, convenience, cleanliness, attractiveness or usefulness of the NWMSBID. The company may provide by agreement to any other business improvement district located within the city any of the services it provides to the NWMSBID. The company may provide by agreement to contract with the owners of any assessable property within the NWMSBID to maintain any publicly-owned properties within the NWMSBID.
- (g) *Assessment base.* The assessment base through which the annual budget of the NWMSBID shall be funded shall be the assessment base for the real property tax of the city (without reduction for any special abatements).
- (h) *Properties exempt from assessment; properties subject to reduced assessment.*
 - (1) All exclusively residential properties having not more than four rental units shall be exempt from assessment, provided that in order to effect such exemption the owner (or his agent) of such a property must file an affidavit with the city's finance department declaring that the property in question meets the requirements of the exemption, and provided further that the finance department shall be responsible for determining which properties qualify for such exemption.
 - (2) All properties (i) which are exempt from the city's real property tax and (ii) which are owned by either churches or the federal, state or local government shall be exempt from assessment.
 - (3) The finance department shall maintain and keep current a list of the exempt properties.
- (i) *Limitations on assessments*
 - (1) The base annual assessment for each assessable property shall be equal to (a) the ratio of such assessable property's assessment base to the total amount of the assessment base for all assessable properties in the NWMSBID multiplied by (b) the total service and improvement cost as reflected in the adopted budget for the respective fiscal year (less any allocated surplus or estimated revenue from other sources) (the "rate of assessment"), provided that the base annual assessment calculated according to the rate of assessment shall be reduced by 50 percent for organizations which are exempt from the city's real property tax but which are not exempt from assessment under subsection (h)(2). Any funds generated by assessments or contributions which are not expended during the fiscal year generated shall be applied towards the total service and improvement

cost for the next fiscal year. Upon dissolution of the NWMSBID, the board of directors of the company shall distribute any surplus funds in accordance with its certificate of incorporation.

- (2) As to each assessable property, the amount of assessment calculated according to the rate of assessment shall not at any time exceed 15 percent of the city's real property tax rate per \$100.00 of assessed value, provided that this limitation shall be adjusted for any increase in the cost of living, using the relevant consumer price index, but in no event by more than five percent from the prior fiscal year; further provided that this limitation (after any adjustment for cost of living) shall also be adjusted for any increase in the minimum wage mandated by federal or state law. In calculating the assessment base, NWMSBID shall include the estimated cost of such increase, together with the actual cost to it of such increase previously incurred if such increase became effective during the prior fiscal year and the estimated cost thereof was not included as part of the assessment base for such year.
- (j) *Assessment billing.* Each year the city finance department shall provide the company with a list of the assessed values of all properties located within the NWMSBID which are subject to assessment hereunder as well as the (i) name and address of the owner(s) of each such property and (ii) the address and parcel number of each such property. The NWMSBID's assessment bills shall be distributed annually by the company.
- (k) *Collection of delinquent assessments.* In accordance with 22 Del. C. § 1505(c), delinquent assessments shall be collectable by the city through its finance department in the same manner as the collection of a city real property tax delinquency provided that an assessment shall be determined to be delinquent according to the same rules or method used for determining when a city real property tax payment is delinquent, and provided further that the company shall provide a list of delinquent assessments to the city finance department within thirty (30) days after such assessments become delinquent.
- (l) *Limitations on borrowing authority.* The NWMSBID shall not borrow funds for a term beyond the termination date of the NWMSBID as set forth in subsection (d) above.
- (m) *Credits for and interest on assessment overpayments.*
 - (1) If an assessment appealed to the county board of assessment review results in a reduction in the assessed valuation of any real property within the NWMSBID which is either not appealed or which is sustained in whole or in part upon final appeal, which reduction results in an overpayment of the NWMSBID assessment for any fiscal year for which the reduction is applicable, the property owner shall not be entitled to a refund of such assessment overpayment. Any such overpayment shall be a credit to the property owner's assessment account and will be used to offset any subsequent assessment obligation which has not yet been imposed with respect to the property for NWMSBID purposes.
 - (2) No interest shall accrue on any assessment credit arising under this section as of the date of a payment of assessment under protest and continuing until the date on which the last principal amount attributable to the overpayment is

credited to the property owner's assessment account. A payment under protest shall mean any payment of the entire amount of the NWMSBID assessment timely remitted to the NWMSBID for any fiscal year for which a subsequent reduction in property tax assessment shall be applicable. In the event that a property owner does not pay the assessment when due or pays less than the full amount of the assessment, then any applicable penalties and interest shall accrue on such delinquent assessments based on the property assessment at that time and not on the basis of a subsequent reduction in property assessment resulting from the appeal.

- (3) NWMSBID assessment credits shall be applied first to any outstanding assessment balance on the property upon which they accrued. Any credit remaining of record shall be applied to any assessment levied thereafter, and shall be credited as of the date upon which the obligation first constitutes a lien against the real property against which it is billed.
- (4) Subject to written application made to and approval by the NWMSBID, the NWMSBID may pay to the property owner, the amount that is due as an authorized refund.
- (5) The provisions of this section shall be applicable to appeals which have resulted in reductions of assessed value of real property for the tax year commencing July 1, 2018 and July 1, of each tax year thereafter, provided that a written request for a credit or refund, if applicable, has been delivered to the NWMSBID, and that a copy of the final order which resulted in the reduction of assessed value of the subject property has been provided to the director of finance and the NWMSBID.

SECTION 2. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....~~January 4,~~ 2018 Jan. 18
Second Reading.... ~~January 4,~~ 2018 Jan. 18
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved as to form this
3rd day of January, 2018.

Elizabeth D. Power
Senior Assistant City Solicitor

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance amends the City Code to authorize the creation of a North Wilmington Market Street Business Improvement District.

FISCAL IMPACT: This Ordinance has no anticipated fiscal impact.